TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1915

No. [redacted] 449

FRANKLIN K. LANE, SECRETARY OF THE INTERIOR, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA EX RELATIONE JULIA LAMERE MICKADIET, NÉE TIEBAULT, AND ALMA LAMERE TIEBAULT.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED MAY 1, 1916.

(24669)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 955.

FRANKLIN K. LANE, SECRETARY OF THE INTERIOR, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA EX RELATIONE JULIA LAMERE MICKADIET, NÉE TIEBAULT, AND ALMA LAMERE TIEBAULT.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Caption	a	I
Transcript of record from the Supreme Court of the District of Columbia	1	1
Caption	1	1
Petition for mandamus	1	1
Exhibit A. Transcript of proceedings before the Thurston County Court, Nebraska	10	10
Rule to show cause	14	14
Return to rule to show cause	14	14
Demurrer	17	17
Demurrer overruled; prayers of petition denied and petition dismissed with costs; judgment; appeal noted	18	18
Memorandum: Appeal bond approved and filed	18	18
Assignment of errors	18	18
Designation of record	19	19
Clerk's certificate	20	20
Order of argument	21	21
Opinion, Robb, J	22	21
Decree	25	25
Petition for a writ of error	26	26
Assignment of errors	29	27
Order staying mandate	34	30
Writ of error	35	30
Citation and service	36	30
Clerk's certificate	37	31

a Transcript of record. Court of Appeals of the District of Columbia. January term, 1915. No. 2762. No. 5, Special Calendar. The United States of America ex relatione Julia Lamere Mickadiet, née Tiebault, and Alma Lamere Tiebault, appellants, *vs.* Franklin K. Lane, Secretary of the Interior. Appeal from the Supreme Court of the District of Columbia. Filed December 7, 1914. Printed December 22, 1914.

1 In the Court of Appeals of the District of Columbia.

U. S. A. EX REL. JULIA LAMERE MICKADIET ET AL., APPELLANTS, *vs.* FRANKLIN K. LANE, &c. } No. 2762.

Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA EX RELATIONE Julia Lamere Mickadiet, née Tiebault, and Alma Lamere Tiebault, plaintiffs, *vs.* FRANKLIN K. LANE, SECRETARY OF THE INTERIOR, defendant. } At Law. No. 57083.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

Petition for Mandamus.

Filed July 14, 1914.

In the Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA EX RELATIONE Julia Lamere Mickadiet, née Tiebault, and Alma Lamere Tiebault, plaintiffs, *vs.* FRANKLIN K. LANE, SECRETARY OF THE INTERIOR, defendant. } At Law. No. 57083.

To the Supreme Court of the District of Columbia:

Your petitioners respectfully allege and show to the court:

2 That your petitioner, Julia Lamere Mickadiet, née Tiebault, who is of the age of thirty years, or thereabouts, and who since the beginning of the matters and things in controversy hereinafter referred to has been married to one F. E. Mickadiet, and with her said husband is now residing near the city of Lawrence, in

the State of Kansas, and Alma Lamere Tiebault, who is of the age of nineteen years, or thereabouts, and is therefore past the age of her majority according to the laws of the State of Nebraska, and who now resides in the county of Thurston, State of Nebraska, present this their petition for mandamus against the defendant Franklin K. Lane, who on and since the 4th day of March, 1913, has been and now is the duly appointed, qualified, and acting Secretary of the Interior for the United States of America; your said petitioners having with reference to the matters and things in controversy, as hereinafter set forth, no other or adequate remedy save to appeal to this honorable court to issue the writ of mandamus against the said defendant, as hereinafter prayed for; and thereupon your petitioners respectfully represent:

First. That your petitioner, Julia Lamere Mickadiet, née Tiebault, is a member of the Winnebago Tribe of Indians, and is now residing with her husband near the city of Lawrence, in the State of Kansas; that your petitioner, Alma Lamere Tiebault, is a member of the Winnebago Tribe of Indians and now resides in Thurston County, State of Nebraska; that said Winnebago Tribe of Indians of which the said petitioners are members has its reservation and tribal and other lands within the county of Thurston, in the State of Nebraska.

Second. That heretofore, and in the month of April, 1908, your petitioners, for the purpose of enforcing their rights as heirs-at-law of My Soul Tiebault, a member of the said Winnebago Tribe of Indians, to the possession of the allotments of lands hereinafter specifically described and which were owned by the said My Soul Tiebault at the time of his decease, and to the rents, issues, and profits arising therefrom, instituted a suit against the United States of America, Ellen Tebo, Frank Tebo, jr., George Tebo, Jennie Tebo, Lucy Tebo, Harrison Tebo, Joseph Tebo, William Tiebault, and Lizzie Traub, in the Circuit Court of the United States for the District of Nebraska, Omaha Division, under the provisions of the act of Congress of February 6, 1901, for the reason that your petitioners claim to be of Indian blood and descent and members of the Winnebago Tribe of Indians and claim to be entitled by inheritance to allotments of land under the provisions of the act of Congress of the United States relating thereto, and to the rights, issues, and profits arising therefrom, their claim of right thereto being disputed by the defendants named in said cause, and hereinbefore referred to; that while said cause was so pending in the Circuit Court of the United States for the District of Nebraska, the said defendants and the United States of America filed demurrers to the bill of complaint of your petitioners, which said bill of complaint recited the facts in substance, as hereinafter alleged and set forth, which said demurrer was duly argued by counsel before said court and briefs and authorities were duly submitted and the said demurrer was after due consideration by said court overruled, and the said parties were ordered
3 by the court to answer to said bill; that in and by said demurrer the said defendants sought to attack the validity and

regularity of the decree of adoption hereinafter referred to but which decree was found by the court upon said demurrer to be valid and binding; all of which said proceedings were had in said court prior to the time of the repeal of the act of Congress of February 6, 1901, by the passage and approval of the act of Congress which took effect June 25, 1910; that thereupon answer was duly filed by said parties and testimony taken for submission of said cause to the court as hereinafter set forth; that said cause was pending in said court at the time the act of Congress of June 25, 1910 (36 Stat. at Large, 855) took effect, and which operated to repeal that portion of said act of Congress of February 6, 1901, which gave jurisdiction in such matters to the Circuit Court of the United States; the taking of testimony having been by the parties to said cause fully completed and ready for submission to the court therein, it was thereupon stipulated and agreed by the parties thereto, including the United States of America, that said cause should be dismissed, each party to pay their own costs, and that the record of the testimony so taken should be forwarded to the honorable Secretary of the Interior and submitted to him by the parties to said cause in support of their respective claims in and to the lands in controversy, and the rents, issues, and profits thereof, certified copies of said stipulations to accompany such testimony, which stipulations were duly approved by the Attorney General of the United States; all as will more fully appear by the certified copies of said stipulations and the records herein on file with the Secretary of the Interior and to which reference is hereby made for further certainty.

Third. Your petitioners further represent that in the month of August, 1887, the United States of America, under and by virtue of the act of Congress approved February 8, 1887, duly allotted to My Soul Tiebault, a male Winnebago Indian of the full blood, the south one-half (So. ½) of the southwest quarter (S. W. ¼) of section two (2), township twenty-six (26), range six (6), and the east one-half (E. ½) of the northwest quarter (N. W. ¼) of section twelve (12), township twenty-six (26), range eight (8), all in Thurston County, Nebraska, and within the Winnebago Reservation in said State; that thereafter patents were duly issued by the United States to the said My Soul Tiebault therefor, by the terms and conditions whereof and by the terms and conditions of said act of Congress approved February 8, 1887, under which the allotments of said land were made and such patents issued, said lands were granted to the said allottee, My Soul Tiebault, and to his heirs, subject to the following conditions: "That the United States does and will hold the lands thus allotted for the period of twenty-five (25) years in trust for the sole use and benefit of the Indian to which such allotments shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid,

in fee, discharged of said trust and free of all charge or en-
4 cumbrance whatsoever." That the trust period under which said allotted lands were so as aforesaid granted to the said My Soul Tiebault has not as yet expired.

Fourth. That during the month of August, 1887, the United States of America, under and by virtue of the said act of Congress approved February 8, 1887, duly allotted to one Clara Tiebault, a Winnebago Indian of the full blood and daughter of the said My Soul Tiebault, lot three (3) of the northwest quarter (N. W. ¼) of section two (2), township twenty-six (26), range six (6) within the Winnebago Reservation in Thurston County, State of Nebraska; that the terms and conditions under which said land was allotted by the United States to the said Clara Tiebault were the same as the terms and conditions of the allotment made to the said My Soul Tiebault, as hereinbefore at paragraph three (3) hereof alleged and set forth, and to which paragraph reference is made in that respect for further certainty. That thereafter the said Clara Tiebault died intestate and unmarried and without issue on the — day of January, 1888, leaving as her only heir-at-law her father, My Soul Tiebault; that under the laws of the State of Nebraska then in force it was provided by section thirty (30) of chapter twenty-three (23) of the Compiled Statutes of Nebraska for the year 1887, "When any person shall die seized of any lands, tenements, or hereditaments, or of any right thereto * * * not having lawfully devised the same, they shall descend, subject to his debts, in the manner following: * * * Second. * * * and if he shall have no issue nor widow, his estate shall descend to his father." That by virtue of the laws of Nebraska and of the said act of Congress of February 8, 1887, the title of, in and to the lands so allotted to Clara Tiebault descended to and became vested in the said My Soul Tiebault, subject only to the trust reserved therein by the United States under the patent which duly issued therefor under said act of Congress, and the said My Soul Tiebault became and was entitled to the use, occupation, enjoyment, and the rents, issues, and profits thereof; that the said My Soul Tiebault was by the United States recognized as the sole heir-at-law of the said Clara Tiebault, and as such entitled to the use occupation, rents, issues, and profits of the land so as aforesaid allotted to Clara Tiebault; and thereafter and on or about the ninth day of December, 1893, patent for said lands was duly issued by the United States to and for the benefit of the said My Soul Tiebault, who, ever since the death of his daughter, Clara Tiebault, has had the use and enjoyment of said lands, and of the rents, issues, and profits thereof. That the trust period under said patent has not as yet expired.

Fifth. Your petitions further represent that thereafter and on or about the first day of October, 1896, the said My Soul Tiebault, being then unmarried and without children, signed and filed his petition in writing, duly verified, in the county and probate court

for Thurston County, Nebraska, in which county and State he then resided, wherein and whereby he did ask to adopt as his children your petitioners, Julia Lamere Mickadiet née Tiebault, then Julia Lamere, and aged thirteen years, and Alma Lamere Tiebault, then named Alma Lamere, and aged one year, both then residents and citizens of Thurston County, Nebraska, and to bestow upon them equal rights, privileges, and immunities of children born in lawful wedlock, and prayed the court for an order that, from and after the date of the filing of said petition, the said children (meaning your petitioners) should be deemed to all legal rights and purposes the children of the said My Soul Tiebault, and that their names should be Julia Lamere Tiebault and Alma Lamere Tiebault.

That thereafter, and on the fifth day of October, 1896, the said My Soul Tiebault appeared in person before the county judge of Thurston County, Nebraska, and in open court, in the presence of said judge and two (2) witnesses, signed and filed his stipulation in writing to the effect that in the adoption of your petitioners he bestowed upon them equal rights, privileges, and immunities of children born in lawful wedlock; that on the same day Joseph A. Lamere and Florence Lamere, both then residing in Thurston County, Nebraska, and being the natural father and mother, respectively, of your petitioners, appeared in said County Court for Thurston County, Nebraska, and before the judge thereof, and both in open court and in writing, filed in said court, signed in the presence of the said county judge and two (2) witnesses, duly consented to the adoption of your petitioners by the said My Soul Tiebault as his own children.

Thereupon the said county court, on the said fifth day of October, 1896, made an order setting the matter of the adoption of your petitioners by the said My Soul Tiebault for hearing on the fourth day of November, 1896, and ordered that notice of the application for adoption be published for three (3) weeks in the Pender Times, which notice was duly published and proof thereof made and filed in said court on the 25th day of October, 1896.

That thereafter the said matter came on for hearing before the said county court on the fourth day of November, 1896, and on said date said court, after full hearing and being advised in the premises, entered its formal decree in said adoption proceedings wherein and whereby it was provided that said infant children (meaning your petitioners) were fully and legally adopted by the said My Soul Tiebault, they to take the names of Julia Lamere Tiebault and Alma Lamere Tiebault, respectively, and that they should have all legal rights, privileges, and immunities and heirships as if they had been born to the said My Soul Tiebault in lawful wedlock, which said decree was duly recorded upon the records of said court on the nineteenth day of January, 1897. That no appeal or error proceedings were ever taken from the said judgment and decree, and the same then became and still is of full force and effect. That there will be filed herewith and made a part hereof *is* a full, true, and cor-

rect copy of the said adoption proceedings, marked "Exhibit A," including the said petition, stipulation, consent, order for hearing and notice, notice and proof of publication thereof, and decree of the court.

Sixth. That the laws of the State of Nebraska in force at the time said decree of adoption was made providing for the adoption of children in said State, to wit, section 800 of the Code of Civil
6 Procedure contained in the Compiled Statutes of Nebraska for the year 1895, provided "That all decrees entered in such case in conformity with the provisions and requirements of said chapter shall be conclusive upon all persons interested in such proceedings or matter, and the child or children thus adopted shall take the surname of the person or persons adopting the same, and all relations of parent and child agreeable to such stipulations and the decree of the probate court shall attach, and such child or children, if so stated in said decree, shall be subject to the exclusive control and custody of such parent or parents and shall possess and enjoy all the rights, privileges, inheritance, heirship, and immunities of children born in lawful wedlock."

Seventh. That from and after the granting of said decree of adoption, and in accordance therewith, your petitioners, except while attending school, resided with and sustained the relation to the said My Soul Tiebault of parent and children up to and including the date of his death; and that under the laws of the State of Nebraska, as heretofore shown, they became and are his only lawful heirs and entitled to inherit any and all of his estate to the same extent as if they were heirs of his body and children born in lawful wedlock.

Eighth. Your petitioners further show that the said My Soul Tiebault died intestate and unmarried and without issue of his body in Thurston County, Nebraska, where he resided, on the 10th day of February, 1906, leaving him surviving as his only heirs-at-law your petitioners, Julia Lamere Mickadiet née Tiebault and Alma Lamere Tiebault, his adopted children and heirs under the law of Nebraska. That section thirty (30) of chapter twenty-three (23) of the Compiled Statutes of Nebraska for the year 1905, in force at the time of the decease of said My Soul Tiebault, provided: "When any person shall die seized of any lands, tenements, or hereditaments or of any right thereto * * * not having lawfully devised the same, they shall descend, subject to his debts, in the manner following: First.—In equal shares to his children." That at the time of his death the said My Soul Tiebault was seized of the lands hereinbefore described, subject only to the trust reserved therein by the United States, all as hereinbefore alleged. That in accordance with the provisions of the said act of Congress of February 8, 1887, and of the laws of Nebraska, to which reference has been heretofore made, all the right, title, and interest of the said My Soul Tiebault in and to said allotted lands has descended to your petitioners in equal shares, who are now the owners thereof, subject to the trust estate reserved therein by the United States, and are entitled to the use, occupation,

enjoyment, rents, issues, and profits thereof; which said lands are of great value and worth at least the sum of ten thousand ($10,000) dollars and upwards.

Ninth. That after the transfer of the testimony and records from the United States circuit court of appeals to the Secretary of the Interior, as hereinbefore alleged, and in accordance with the stipulation of the parties, your petitioners duly filed with the Secretary of the Interior their petition, setting forth their claims to the lands in controversy as the lawful heirs-at-law and next of kin, in
7 accordance with the laws of the State of Nebraska, of the said My Soul Tiebault, deceased, and thereafter the said Ellen Tebo, Frank Tebo, jr., George Tebo, Jennie Tebo, Lucy Tebo, Harrison Tebo, Joseph Tebo, William Tiebault, and Lizzie Traub duly filed their answer with the Secretary of the Interior to the petition of your petitioners, setting forth their claims to the lands in controversy.

Tenth. Thereupon, and upon the issues so joined, the said matter was by the authority of the Secretary of the Interior referred to a special examiner, Mr. G. M. Tunison, who, using the evidence certified to by the clerk of the court and taking supp-emental testimony at the Winnebago Agency, and before whom arguments were had and with whom briefs were filed, duly made his report in the matter in 1912 finding in favor of your petitioners that they were the lawful heirs-at-law of My Soul Tiebault and as such entitled to inherit the lands in controversy, which said report was duly submitted to the Secretary of the Interior, which office was then held by the honorable Walter L. Fisher, by the Acting Commissioner of Indian Affairs on December 14, 1912, with the opinion wherein among other things, it was held, "that the decree of adoption should be recognized as valid and binding and the estate awarded as recommended by the special examiner." Thereupon the records, testimony, briefs, and opinion and findings of the said special examiner and of the said Acting Commisisoner of Indian Affairs were all duly presented to the Secretary of the Interior (Walter L. Fisher) who duly examined the same, and on the 11th day of January, 1913, duly pronounced his finding, judgment, and decree approving the report, findings, and conclusions of the said special examiner and the said Acting Commissioner of Indian Affairs in the following language, to-wit: "The proceedings had in determination of the heirs of My Soul Tiebault, deceased, Winnebago allottee No. 184, and of Clara Tiebault, deceased, Winnebago allottee No. 185, both of Nebraska, and the conclusions of the special examiner are hereby approved; and I find that by the adoption proceedings and the decree of the Thurston County court in 1896 that Julia Lamere and Alma Lamere became the legally adopted children of My Soul Tiebault, thereafter to be known as Julia Lamere Tiebault and Alma Lamere Tiebault, and as such adopted children were entitled to his whole estate, sharing equally therein; that My Soul Tiebault was the sole heir of his deceased daughter, Clara Tiebault, and that her allotment being included in his estate

descended from him to his adopted children, Julia Lamere Tiebault and Alma Lamere Tiebault, in equal shares." That said findings and judgments so rendered became and ever since have been conclusive and final and binding upon all parties to said proceeding and upon the Secretary of the Interior and other officials of the United States of America.

Eleventh. That thereafter the said findings and judgment of the Secretary of the Interior were duly transmitted to the Commissioner of Indian Affairs and through the latter to the superintendent and special disbursing agent for the Winnebago Agency at Winnebago, Nebraska; that under and by the directions of the Secretary of
8 the Interior the findings and judgment so by him rendered in said matter were duly carried into effect and your petitioners were duly notified thereof and immediately entered upon the possession and enjoyment of said lands and on or about the first day of February, 1913, all the accumulated rents, issues, and profits derived from the lands in controversy in the custody of the superintendent and special disbursing agent of the Winnebago Agency at Winnebago, Nebraska, were duly paid over to your petitioners in equal shares, and thereafter on or about the first day of May, 1913, a further distribution of the rents, issues, and profits collected from the said lands was had and the same were duly paid over to your petitioners in equal shares, and on or about the first day of September, 1913, another distribution of the rents, issues, and profits derived from said lands was had and the same were duly paid over to your petitioners in equal shares; that your petitioners proceeded to negotiate for the leasing of said lands for the coming year, as was their legal right as the owners thereof, and to care for and look after the same as their own.

Twelfth. Your petitioners further represent that on or about the 29th day of September, 1913, the defendant, without legal right or authority so to do, directed the superintendent and special disbursing agent of the Winnebago Agency at Winnebago, Nebraska, to withhold all funds accrued or deposited to the credit of the My Soul Tiebault and Clara Tiebault estates until further instructions, and the said defendant, as such Secretary of the Interior, has refused and still refuses either to permit to be paid over the rents, issues, and profits derived from the lands in controversy to your petitioners, or to allow to your petitioners, or to either of them, the beneficial use and enjoyment thereof upon the claim, as your petitioners are informed and believe, that he intends to and will proceed to review and vacate the findings of his predecessor in office in favor of your petitioners as hereinbefore set forth; that thereafter, and on or about the 8th day of October, 1913, as your petitioners are informed and believe, Harrison Tebo, one of the claimants to said land hereinbefore mentioned, filed a formal motion for a review and reconsideration of the said decision and judgment of the Secretary of the Interior and asked that the same be vacated, which said motion the defendant, as such Secretary of the Interior, entertained and caused

notice to be served upon your petitioners to the effect that he had entertained an application of Harrison Tebo, one of the claimants to the lands in controversy, as hereinbefore alleged, for a review and vacation of the findings and judgment of his predecessor in behalf of your petitioners, as hereinbefore set forth; that thereupon and pursuant to such notice, your petitioners filed objections to the authority, right and jurisdiction of the said defendant to review, vacate or modify in any respect whatsoever the said judgment of his predecessor in office rendered in accordance with the provisions of the act of June 25, 1910, under which said act, as your petitioners claimed, the Secretary of the Interior sits as a court and acts judicially in determining who are the persons who, under the laws
9 of Nebraska and pursuant to the provisions of the act of Congress of February 8, 1887, were and are the heirs at law and next of kin of the said My Soul Tiebault, deceased, and that he was without power or authority whatsoever under the act of Congress of June 25, 1910, to ignore, vacate, or annul the decree of adoption issued by the county court of Thurston County, Nebraska, as hereinbefore alleged: that the defendant as such Secretary of the Interior has overruled the said objections of your petitioners against the jurisdiction and authority of the defendant to review, vacate, or modify the said decision of his predecessor so as aforesaid made and announced on the 11th day of January, 1913.

Thirteenth. Your petitioners further represent that they are entitled to have paid over to them and receive for their use and benefit the rents, issues, and profits derived from the lands in controversy and so as aforesaid withheld from them by the superintendent and special disbursing agent of the Winnebago Agency at Winnebago, Nebraska, under and by the direction of the defendant as such Secretary of the Interior, and they are entitled to have the same applied for their use and benefit under and by the direction of the Secretary of the Interior, all in accordance with the provisions of the several acts of Congress hereinbefore referred to and that the defendant as such Secretary of the Interior is without right or authority in law to withhold the said rents, issues, and profits, or the beneficial use thereof, from your petitioners.

Wherefore your petitioners pray that this court grant, issue, and award a peremptory writ of mandamus to the defendant, requiring and directing him as such Secretary of the Interior: First, to forthwith pay over or cause to be paid over to your petitioners, as by law required, any and all moneys collected under his supervision as the proceeds of the rents, issues, and profits derived from the lands hereinbefore described, and which moneys, under the direction and instruction of said defendant, as such Secretary of the Interior, have been withheld from petitioners by the agent or superintendent in charge at the Winnebago Agency at Winnebago, Nebraska; second, or that the said defendant, as such Secretary of the Interior, be directed and required to expend, or cause to be expended, such rents, issues, and profits for the use and benefit of your petitioners as

by law required; third, that the said defendant, as such Secretary of the Interior, be commanded and directed to carry into effect in all respects the said judgment and decree of his predecessor, dated the 11th day of January, 1913, in favor of your petitioners as respects the occupation, use, and enjoyment by your petitioners of the lands hereinbefore described and the beneficial use of the rents, issues, and profits derived therefrom; fourth, that the said defendant, as such Secretary of the Interior, be commanded and directed to allow, give, and grant unto your petitioners any and all privileges and rights to which they are entitled under the law in and to the lands hereinbefore described and to the rents, issues, and profits thereof as the lawful owners of said lands, subject only to the trust estate reserved therein by the United States and the restraint upon alienation of the said lands in accordance with the provisions of said trust; fifth, and for all other and further relief to which your petitioners may be by law entitled by reason of the premises in and to the lands in controversy and the rents, issues, and profits thereof, together with their costs herein sustained.

HOWARD SAXTON and
BROWN, BAXTER & VAN DUSEN,
E. F. COLLADAY,
Attorneys for Petitioners.

STATE OF NEBRASKA,
County of Douglas, ss:

Alma Lamere Tiebault, being first duly sworn, deposes and says that she is one of the petitioners in the above-entitled cause; that she has read and examined the foregoing petition for mandamus and knows the contents thereof and that the facts therein set forth are true.

ALMA LA MERE TIEBAULT.

Subscribed in my presence and sworn to before me this 9th day of July, 1914.

[SEAL.]

NETTIE FLOREN,
Notary Public.

Exhibit "A" to petition for mandamus.

Filed July 21, 1914.

In the County Court of Thurston County, Nebraska.

In the matter of the adoption of Alma Lamere and Julia Lamere.

Petition.

To the County Court of Thurston County:

Your petitioner, My Soul Tiebault, respectfully represents to the honorable court that he is a resident of the State of Nebraska, living at Winnebago, Thurston County, and that he desires to adopt two

children, Alma Lamere, aged one year, and Julia Lamere, aged thirteen years, and that they are the children of Joseph Lamere and Florence Lamere, and to bestow upon them equal rights, privileges, and immunities of children born in lawful wedlock. That your petitioner, being a widower without a family, has taken a great interest in these children, and because of his relationship to them and the pleasure he takes in their company he desires to adopt them. That he has sufficient income to provide for their needs and to furnish suitable nurture and education.

Therefore your petitioner prays that the court may make an order that from and after the date thereof such children shall be deemed to all legal intents and purposes the children of your
11 petitioner; and that to the name of said children may be added Tiebault, the name of your petitioner.

MY SOUL TIEBAULT.

STATE OF NEBRASKA,
Thurston County, ss:

My Soul Tiebault, being first duly sworn, says, I am the petitioner above named, that the petition expresses my desire, and the statements there made are true.

MY SOUL (his x mark) TIEBAULT.

Subscribed in my presence and sworn to before me this 1st day of October, A. D. 1896.

T. L. SLOAN,
Notary Public.

Recorded Jan. 18, 1897.

In the County Court of Thurston County, Nebraska.

In the matter of the adoption of Alma Lamere and Julia Lamere.

Stipulation.

The petitioner herein desires to stipulate hereby that in the adoption of Alma Lamere and Julia Lamere he bestows upon them equal rights, privileges, and immunities of children born in lawful wedlock.

In testimony whereof I have hereunto set my hand this 5th day of October, A. D. 1896, in open court at Pender, Thurston County, Nebraska, and in the presence of the county judge.

MY SOUL (his x mark) TIEBAULT.

Signed in the presence of:
OLIVER LAMERE.
THOMAS MCCAULEY.

Attest:
J. M. CURRY,
County Judge. [SEAL.]

In the County Court of Thurston County, Nebraska.

In the matter of the adoption of Alma Lamere and Julia Lamere.

Consent of parents.

To the County Court of Thurston County:

We, Joseph A. Lamere and Florence Lamere, father and mother, having the custody of Alma Lamere and Julia Lamere, named
12 in the petition of My Soul Tiebault, deeming it proper that the adoption of the children named by said petitioner shall take effect, do hereby consent to such adoption.

Signed in open court in the court room of the county judge at Pender, in Thurston County, this 5th day of October, A. D. 1896, and in the presence of the county judge.

JOSEPH A. LAMERE.
FLORENCE (her x mark) LAMERE.

Witnesses:
OLIVER LAMERE.
THOMAS MCCAULEY. [SEAL.]

In the County Court of Thurston County, State of Nebraska.

In the matter of the adoption of Alma Lamere and Julia Lamere.

Notice.

STATE OF NEBRASKA,
Thurston County, ss:

At a County Court, held at the county court room, in and for said county, October 5th, A. D. 1896.

Present: J. M. Curry, county judge.

On reading and filing the petition of My Soul Tiebault, praying that he may adopt Alma Lamere and Julia Lamere, minor children of Joseph and Florence Lamere, and on filing and reading the consent of the parents of said minors to the prayer of said petition:

Ordered that November 4, 1896, at 3 o'clock p. m., be assigned as the time for hearing said petition, when all persons interested in said matter may appear at the County Court to be held in and for said county, and show cause why the prayer of petitioner should not be granted; and that notice of the pendency of said petition and the hearing thereof be given to all persons interested in said matter by the publication of this order and notice in the Pender Times for a period of three weeks from the date hereof.

J. M. CURRY,
County Judge.

Pender, Oct. 6, 1896.

STATE OF NEBRASKA,
Thurston County, ss:

M. W. Murray, of lawful age, being duly sworn, deposes and says that he is the publisher of "The Pender Times," a weekly newspaper printed and published at Pender, in said county, and of general circulation in said county; that the annexed notice, which is a
13 part of this proof of publication, was published in said paper, and not in a supplement, for three consecutive weeks, the first publication being the 9th day of October, 1896, and the last publication on the 23rd day of October, 1896; that said newspaper during all of said time had a bona fide circulation of more than 200 copies weekly and had been published within said county for more than 52 successive weeks prior to the commencement of said publication, and was printed either in whole or in part in an office maintained in Pender, the place of publication.

M. W. MURRAY.

Subscribed and sworn to before me this 25th day of October, 1896.

———— ————.

STATE OF NEBRASKA,
Thurston County, ss:

I hereby certified that this is a true copy of the original notice and proof of publication.

[SEAL.] (Signed) J. M. CURRY,
County Judge.

STATE OF NEBRASKA,
County of Thurston, ss:

At a session of the County Court held in and for said county at the county court room in Pender, on the fourth day of November, A. D. 1896.

Recorded Jan. 19, 1897.
Present: J. M. Curry, County Judge.

In the matter of the adoption of Alma Lamere and Julia Lamere, infants.

Be it remembered that on the 5th day of October A. D. 1896, My Soul Tiebault, of the said county, filed his duly verified petition praying that the said infant children might be legally adopted by him, and that, on the same day, the said Joseph A. Lamere and Florence Lamere, parents of said children, filed their duly verified petition praying for and consenting to such adoption.

And that, on the same day, this court caused to be filed and entered of record an order of hearing, assigning November 4, A. D. 1896, at three o'clock p. m. at the county court room, as the time and place of hearing when and where all persons in interest might appear and show cause, if any there be, why the prayers of the said peti-

tioners should not be granted; and in and by the terms of such order of hearing, it was directed that notice of the pendency of the petitions be given to all parties interested therein by publication
14 of the order of hearing in The Pender Times, a weekly newspaper, for three successive weeks prior to the said day of hearing. And that on this the said day of hearing due proof of the publication of the said order of hearing, as required by law, was made and filed.

And that thereupon the court proceeding to an examination in the premises, no one appearing to oppose or contest, finds that the statements in the said petition are true, and that the said My Soul Tiebault is a proper person to adopt the said infants.

It is therefore considered, adjudged, and decreed that the said infant children be, and they hereby are, fully and legally adopted by the said My Soul Tiebault, and that the said children shall be known by and have the name of Alma Lamere Tiebault and Julia Lamere Tiebault, respectively; and that the said children shall have all the legal rights, privileges, immunities and heirships, as if they had been born to the said My Soul Tiebault in lawful wedlock.

In witness whereof, I have hereunto set my hand and the seal of the said County Court, at Pender, this Nov. 4th, A. D. 1896.

[SEAL.] J. M. CURRY,
County Judge.

Recorded Jan. 19, 1897.

Rule to show cause.

Filed July 14, 1914.

* * * * * * *

Upon consideration of the petition of Julia Lamere Mickadiet, née Tiebault and Alma Lamere Tiebault, filed in the above entitled cause, it is, this 14th day of July, 1914, by the court,

Ordered that the defendant Franklin K. Lane, Secretary of the Interior of the United States, show cause, if any he have, on or before the 24th day of July, 1914, why the prayers of said petition should not be granted and why the writ of mandamus should not issue as prayed therein; provided a copy of this order be served upon said defendant on or before the 18th day of July, 1914.

By the court.

THOS. H. ANDERSON,
Senior Justice.

Return to rule to show cause.

Filed July 23, 1914.

* * * * * * *

Comes now Andrieus A. Jones, First Assistant Secretary and in the absence of the Secretary, Acting Secretary of the Interior, respondent in the above-entitled case, and in answer to the rule

15 to show cause why mandamus should not issue as prayed in the petition herein filed says:

That admitting generally the statement of facts in said petition, save as herein qualified, it is true that on January 11, 1913, Lewis C. Laylin, then and thereafter until July 1, 1914, being Assistant Secretary of the Department of the Interior, signed an order approving proceedings had in the determination of the heirs of My Soul Tiebault and Clara Tiebault, deceased Winnebago allottees, and finding that the relators were adopted children of said My Soul Tiebault and that his allotments at his decease descended to said relators in equal shares.

That the legal title to the lands allotted to said My Soul Tiebault and Clara Tiebault and thus held to descend to the relators was at said time and at all times since, and is now, vested in the United States, and that said lands are held in trust by the United States for the benefit of the allottees by virtue of trust patents issued to the said allottees under the provisions of the act of February 8, 1887, as averred in the third paragraph of relators' petition.

That under and by the terms of said trust patents the United States, at the expiration of the term of twenty-five years from the date of the issue of said patents, undertook to convey the lands so allotted, in fee, discharged of said trust and free from all charges or incumbrance, to the allottees, as fully appears from the allegations of paragraph three of the petition; but that under the provisions of the act of May 8, 1906 (34 Stat., 182), the Secretary of the Interior was authorized in his discretion whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time, to cause to be issued to said allottee a patent in fee simple.

That said trust period having not yet expired, the relators, on or about September 8, 1913, and in manner and form pursuant to the requirements of the rules and regulations of the department, petitioned the Secretary to issue to them patents in fee under the provisions of said act of May 8, 1906; that on September 8, 1913, in further compliance with the regulations governing such application, notice was duly posted at the Winnebago Agency of the application of said relators, said notice stating that unless cause was shown why said patents should not issue the Commissioner of Indian Affairs would, after thirty days from the date thereof, consider said application with a view of recommending to the Secretary of the Interior that the patents applied for should be issued under the provisions of said act of 1906.

That thereafter, and on October 8, 1913, Harrison Tiebault, claiming to be an heir of the deceased allottees, appeared at the office of the Commissioner of Indian Affairs and protested against the issuance of said patents in fee and filed a formal motion for the review and reconsideration of the departmental order of January 11, 1913, awarding heirship to the relators, on the ground that he desired to file newly discovered evidence tending to show that the alleged

decree of adoption was void on the ground that it was secured by fraud.

16 That said motion was duly allowed and said Harrison Tiebault and the attorneys of record for the relators were duly notified thereof, thirty days being allowed for the submission of new evidence or additional facts or points of law. Relators' counsel were notified that they would have opportunity to answer before the case was reconsidered by the Indian Office or by the respondent. Said time was thereafter enlarged and extended to December 15, 1913, and new evidence and briefs were duly filed. Said relators came in and filed briefs and argument attacking the jurisdiction of the Secretary on the ground that the latter was without jurisdiction to annul a decree of his predecessor in office for the alleged reason that such a decision is a judicial act and can be reviewed, if at all, only by the courts and that the Secretary is without power to review or vacate the said decree of adoption; that in truth and in fact, the said order of January 11, 1913, alleged in the petition to have been made and passed by Walter L. Fisher, was signed and passed by the said Lewis C. Laylin, Assistant Secretary of the Interior not only under Walter L. Fisher, your respondent's predecessor in the office of Secretary of the Interior, but Assistant Secretary under your respondent, during the period covered by the matters complained of.

That thereafter and on June 6, 1914, the Secretary rendered a decision overruling the plea to his jurisdiction to reconsider the action of January 11, 1913, but withholding any decision on other points or consideration thereof until after due notice to the parties of his ruling on the preliminary question of jurisdiction and his authority to entertain the motion for reconsideration; that said parties, including the relators, have been duly notified thereof; and that said matter is now pending before your respondent and undetermined.

Further answering, he admits that he has issued orders to withhold payment of funds accrued or deposited to the credit of the estate of My Soul Tiebault and Clara Tiebault until further instructions, but he avers that the only funds so withheld are those which have accrued since the pendency of the motion for reconsideration aforesaid.

He further states that if upon reconsideration he determines to adhere to and reaffirm the order of January 11, 1913, the accrued funds will be duly paid to the relators, but that until final determination by him of the lawful heirs of said My Soul Tiebault and Clara Tiebault, the said funds should be held intact and that payment thereof to any person should not be made.

He further shows that under the act of June 25, 1910 (36 Stat., 855), the Secretary of the Interior is vested with full and exclusive jurisdiction to ascertain the legal heirs of an Indian allottee deceased prior to the expiration of the trust period and before the issuance of a patent in fee, and that his decision thereon is final and conclusive, and not subject to review or control by the courts.

Wherefore having fully answered the rule to show cause he prays that said rule be discharged, that the petition herein filed be
17 dismissed, and that he be permitted to go hence without day, with his reasonable costs to be taxed by the clerk.

ANDRIEUS A. JONES,
Acting Secretary of the Interior.

PRESTON C. WEST,
Solicitor of the Department.
C. EDWARD WRIGHT,
Assistant Attorney,
Attorneys for Respondent.

DISTRICT OF COLUMBIA, *ss:*

Andrieus A. Jones, Acting Secretary of the Interior, being first duly sworn, says that he has read over the foregoing answer by him subscribed and knows the contents thereof; that the matters and things therein set forth he is informed are true and he believes them to be true.

ANDRIEUS A. JONES,
Acting Secretary of the Interior.

Subscribed and sworn to this 23'' day of July, 1914.
Before me,
[SEAL.] W. BERTRAND ACKER,
Notary Public in and for the District of Columbia.

(Endorsed.)

Service acknowledged this 23d of July, 1914.
E. F. COLLADAY,
Att'y for Relators.

Demurrer.

Filed September 10, 1914.

* * * * * * *

The relators, Julia Lamere Mickadiet and Alma Lamere Tiebault, say that the answer and return of the respondent is bad in substance.

BROWN, BAXTER & VAN DUSEN,
HOWARD SAXTON, and
E. F. COLLADAY,
Attorneys for Relators.

Among the matters of law to be argued are the following:

1. The Secretary of the Interior is without jurisdiction to annul a decision of his predecessor relating to property rights because such a decision is a judicial act and can only be reviewed, if reviewable at all, by the courts.

2. The Secretary of the Interior is without power, under the act of June 25, 1910, to review, vacate, or ignore the adoption decree en-

tered by the County Court of Thurston County, Nebraska, on the 4th day of November, 1896.

18 3. The decree of adoption of the County Court of Thurston County, Nebraska, acting within its jurisdiction, from which no appeal was taken, is not subject to collateral attack, and the Secretary of the Interior is without power or jurisdiction to annul, modify, vacate, or ignore said decree.

4. Harrison Tebo, who made the application to have the decision of the Secretary of the Interior heretofore rendered in favor of these plaintiffs reviewed and vacated, together with all other blood relatives of the said My Soul Tiebault, deceased, are estopped in law to question the validity of said decree of adoption, said decree being final and binding upon My Soul Tiebault in his lifetime and upon his heirs after his death.

Supreme Court of the District of Columbia.

FRIDAY, *October 16, 1914.*

Session resumed pursuant to adjournment, Mr. Justice Gould, presiding.

* * * * * * *

This cause coming on for hearing upon the demurrer of the relators to the answer of the respondent to the rule to show cause, and the same having been argued by the respective attorneys, it is considered that said demurrer be, and the same hereby is, overruled. Whereupon the relators announce that they will stand upon said demurrer; therefore it is considered that the prayers of the petition be, and hereby are, denied, and the petition is hereby dismissed at the costs of the relators and that the respondent have execution thereof.

The relators in open court and in the presence of counsel for the respondent, note an appeal to the Court of Appeals, and the penalty of the bond on such appeal is fixed at $100.00 or a deposit of $50.00 in lieu thereof.

Memorandum.

October 31, 1914.—Appeal bond approved and filed.

Assignment of errors.

Filed November 18, 1914.

* * * * * * *

1. The court erred in overruling the relators' demurrer to the answer of the respondent.

2. The court erred in not holding said answer bad in substance and overruling the demurrer thereto.

3. The court erred in not holding that the respondent was without jurisdiction to inquire into the decision and decree made by his predecessor in office, and without power to set aside the same.

4. The court erred in not holding that the decision and decree made and entered by Walter L. Fisher, Secretary of the
19 Interior on, to wit, the 11th day of January, 1913, was a judicial act not reviewable by his successor in office.

5. The court erred in holding in effect that notwithstanding the provisions of the act of Congress of June 25, 1910, the respondent has the power to review, vacate, or ignore the said decision and decree made and entered by his predecessor in office, Walter L. Fisher, Secretary of the Interior.

6. The court erred in holding in effect that the respondent has the power under the act of June 25, 1910, to review, vacate, or ignore the adoption decree entered by the County Court of Thurston County, Nebraska, on the 4th day of November, 1896.

7. The court erred in holding in effect that the decree of adoption of the County Court of Thurston County, Nebraska, entered on the 4th day of November, 1896, is subject to collateral attack, and that the respondent has jurisdiction to annul, modify, vacate, or ignore the same.

8. The court erred in not holding that Harrison Tebo, together with all the other blood relatives of My Soul Tiebault, deceased, are estopped in law to question the validity of said decree of adoption.

9. The court erred in dismissing said petition.

10. The court erred in entering a judgment dismissing said cause.

HOWARD SAXTON,
BROWN, BAXTER, & VAN DUSEN, and
E. F. COLLADAY,
Attorneys for Plaintiff.

Designation of Record.

Filed November 19, 1914.

* * * * * * *

The following pleadings and papers are hereby designated by counsel for the relators as the record to be made and filed in the Court of Appeals for the District of Columbia in the appeal prayed and taken herein from the judgment of the Supreme Court of the District of Columbia under date of October 16, 1914, overruling the demurrer of the relators to the answer of the respondents and dismissing the petition of the relators:

1. Petition for the writ of mandamus and the exhibits filed therewith and in support thereof.
2. The rule to show cause.
3. The respondent's answer to said rule.
4. The demurrer to said answer.
5. The order overruling the demurrer and entering the judgment dismissing the relators' petition.
6. The praying of appeal by the relators.

7. The bond on appeal.
8. The assignment of errors.
9. This designation.

HOWARD SAXTON,
BROWN, BAXTER & VAN DUSEN, and
E. F. COLLADAY,
Attorneys for Relators.

20 Service of copy of the above designation acknowledged this — day of November, 1914.

C. EDWARD WRIGHT,
Attorney for Defendant.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 32, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 57083 at Law, wherein The United States of America, ex relatione Julia Lamere Mickadiet née Tiebault and Alma Lamare Tiebault, are plaintiffs and Franklin K. Lane, Secretary of the Interior, is defendant, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 4th day of December, 1914.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

(Endorsed on cover:) District of Columbia Supreme Court. No. 2762. U. S. A. ex rel. Julia Lamere Mickadiet et al., appellants, vs. Franklin K. Lane, &c. Court of Appeals, District of Columbia. Filed Dec. 7, 1914. Henry W. Hodges, clerk.

21 *Thursday, February 4th, A. D. 1915.*

THE UNITED STATES OF AMERICA EX RELATIONE JULIA Lamere Mickadiet, née Tiebault, and Alma Lamere Tiebault, appellants,
vs.
FRANKLIN K. LANE, SECRETARY OF THE INTERIOR. } No. 2762.

The argument in the above-entitled cause was commenced by Mr. Irving F. Baxter, attorney for the appellants, and was continued by Mr. Preston C. West, attorney for the appellee.

Friday, February 5th, A. D. 1915.

THE UNITED STATES OF AMERICA EX RELATIONE JULIA Lamere Mickadiet, née Tiebault, and Alma Lamere Tiebault, appellants,
vs.
FRANKLIN K. LANE, SECRETARY OF THE INTERIOR. } No. 2762.

The argument in the above-entitled cause was continued by Mr. Preston C. West, attorney for the appellee, and was concluded by Mr. Irving F. Baxter, attorney for the appellants.

22 Court of Appeals of the District of Columbia.

THE UNITED STATES OF AMERICA EX RELATIONE JULIA Lamere Mickadiet, née Tiebault, and Alma Lamere Tiebault, appellants,
v.
FRANKLIN K. LANE, SECRETARY OF THE INTERIOR, appellee. } No. 2762.

Opinion.

Mr. Justice Robb delivered the opinion of the court:

This is an appeal from an order in the Supreme Court of the District dismissing appellant's petition.

Section 5 of the act of Feb. 8, 1887 (24 Stat., 388), entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations," etc., reads in part as follows:

"That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the lands thus allotted for the period of twenty-five years in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, to his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of such period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: Provided, That the President of the United States may in any case in his discretion extend the period."

My Soul Tiebault was a member of the Winnebago Tribe of Indians and the holder of so-called trust patents under the above act. In October, 1896, appellants then being thirteen years and one year old, respectively, Tiebault, by adoption proceedings in the county court of Thurston County, Nebraska, a court of competent jurisdiction, adopted them, and thereafter, during his lifetime, they lived

with him as his children. He died in February, 1906, in said Thurston County, without issue. Thereupon certain nephews and nieces questioned the adoption decree and laid claim to said allotments, of which Tiebault was seized at the time of his decease. Appellants brought an action in the Federal Court of Omaha, Nebraska, as heirs at law of Tiebault, and made the several nieces and nephews of Tiebault, including Harrison Tiebault and the United States, defendants, but before judgment the act of June 25, 1910 (36 Stat., 855), was passed. That act provides in part as follows:

"That when any Indian to whom an allotment of land has been made, or may hereafter be made, dies before the expiration of the trust period and before the issuance of a fee-simple patent, without having made a will disposing of said allotment as hereinafter provided, the Secretary of the Interior, upon notice and hearing, under such rules as he may prescribe, shall ascertain the legal heirs of such decedent, and his decision thereon shall be final and conclusive. If the Secretary of the Interior decides the heir or heirs of such decedent competent to manage their own affairs, he shall issue to such heir or heirs a patent in fee for the allotment of such decedent; if he shall decide one or more of the heirs to be incompetent, he may, in his discretion, cause such lands to be sold," etc.

The effect of this act being to transfer the jurisdiction of the courts to the Secretary of the Interior (Bond v. United States, 181 Fed., 613; Pell-eta-Yakot v. United States, 188 Fed., 387), the controversy was laid before the Secretary of the Interior, who, after full investigation and hearing, on January 11, 1913, ruled that said adoption decree was valid and regular in all respects, and that appellants were the legal heirs of Tiebault under the laws of the State of Nebraska. No motion for rehearing was filed, nor was the ruling challenged in any way. Thereafter, in February, May, and September, 1913, the accumulated rents and profits derived from the lands in controversy, in the custody of the superintendent and disbursing agent of the Winnebago Agency at Winnebago, Nebraska, were duly paid over to the appellants in equal shares.

In September, 1913, the twenty-five-year trust period not having elapsed, the appellants petitioned the Secretary of the Interior, under the provisions of the act of May 8, 1906 (34 Stat., 182), and the act of June 25, 1910 (36 Stat., 855), to issue to them patents in fee simple, alleging that they were competent to manage their own affairs. Thereupon Harrison Tiebault, one of the parties to the proceeding resulting in the decision of the department of January 11, 1913, that the appellants were the legal heirs of My Soul Tiebault, filed a protest against the issuance of patents in fee and also a motion "for the review and reconsideration" of said decision, the ground of the motion being "newly discovered evidence tending to show that the alleged decree of adoption was void on the ground that it was secured by fraud." Appellants challenged the jurisdiction of the Secretary to annul said decision upon the facts stated, but the Sec-

retary decided that he had jurisdiction to reconsider it and ascertain the lawful heirs of My Soul Tiebault. He accordingly issued orders to withhold payment of funds accrued or deposited to the credit of My Soul Tiebault since the pendency of the motion for reconsideration.

23 The prayers of the bill are that the Secretary be directed to cause to be paid to the appellants the accumulated rents and profits, or to cause such rents and profits to be expended for the use and benefit of said appellants; that the Secretary be directed to carry into effect said decision of January 11, 1913, and for such further relief as appellants "may be by law entitled by reason of the premises in and to the lands in controversy and the rents, issues, and profits thereof."

The allotments held by My Soul Tiebault at the time of his decease are not here questioned in any way. The sole question, therefore, with which we are confronted is whether, under the facts above set forth, the Secretary of the Interior has jurisdiction to readjudicate the question as to who are the legal heirs of said Tiebault. Under the act of 1887 (24 Stat., 388), from which we have quoted, the heirs of a deceased allottee, "according to the laws of the State or Territory" where the land was located, succeeded to his rights, and the act of June 25, 1910 (36 Stat., 855), clothed the Secretary with exclusive jurisdiction to ascertain "the legal heirs of such decedent." His decision upon this question, the act specifically declares, "is final and conclusive." But that does not mean that he could arbitrarily ignore the legal heirs of a deceased allottee and decide in favor of a collateral heir or a stranger in blood. Such a decision would be arbitrary or capricious and not sustainable under any view of this act. See Ness v. Fisher, 223 U. S., 683, 691. We think, therefore, that this act merely clothed the Secretary with jurisdiction to identify the legal heirs of such decedent, and that in so doing he was as much bound by the laws of descent in the jurisdiction where the lands were located as would be any other tribunal.

The jurisdiction of the court in which the adoption proceedings were had is not questioned, nor is it denied that, if the decree rendered by that court is to stand, appellants are the legal heirs of My Soul Tiebault. The sole justification for the attempted reopening of the departmental decision of January 11, 1913, according to the answer to the bill, is that a collateral heir, seventeen years after this decree of adoption (declared by sec. 800 of the Statutes of Nebraska for 1895 to be "conclusive upon all persons interested in such proceedings or matter," which proceedings the Supreme Court of Nebraska, in Ferguson v. Herr, 64 Neb., 662, has held to be "judicial" in character), seeks to "show that the alleged decree of adoption was void on the ground that it was secured by fraud." Appellant's petition that the Secretary exercise the discretion which the statutes reposed in him and issue to them fee simple patents to the Tiebault allotments raised but one issue, namely, whether they were capable

of managing their own affairs and hence entitled to such patents. This petition did not, as contended by counsel for the Government, raise any issue as to their heirship. It is not contended that appellants were guilty of any fraud in procuring their adoption by Tiebault, nor could it well be, since they were infants at the time. This, therefore, is not an attempt by an alleged wrongdoer to profit by his own fraud. Phillips v. Chase, 203 Mass., 556. Tiebault, by procuring the adoption decree, which was in substantial conformity with the provisions and requirements of the local statute, and for ten years thereafter recognizing its validity and receiving the benefits of the relationship thus created, was estopped to challenge it. Ferguson v. Herr, 64 Neb., 660. Nor is one claiming under him in any better position than he would have been if living. In the appeal of Wolf, 13 At. Rep., 760, the administrator and collateral heirs of an adoptive parent sought to have the decree of adoption set aside on the ground that certain false statements had induced it. The court of common pleas held that such administrator and heirs could not be heard to question a decree entered at the instance of the adoptive parent, through whom they claimed. The court said: "When the proceedings were instituted and the decree of adoption made the court undoubtedly had jurisdiction of the subject matter, to wit, the child Caroline C. Sankey, and the promotion of her welfare. Immediately on the entry of the decree and thereafter she was entitled to be maintained and educated by Samuel Sankey, and on his death was entitled to inherit as his child. Nearly nine years after the decree was entered, and more than one year after the death of her adopted father, his administrator and collateral heirs come into court and ask that this decree of adoption be vacated. They are not here in the interest nor on behalf of the innocent subject of adoption, but decidedly against the same. They are either strangers to the adoption proceedings, and therefore have no standing in court, or they are privies in blood or in law, and stand in the shoes of Samuel Sankey, through and under whom they claim." An appeal was prosecuted to the supreme court of the State, where the decision was affirmed "on the opinion of the learned judge of the court below." See also, Parsons v. Parsons, 101 Wis., 76, and 1 Ruling Case Law, 624. If a collateral heir would have no standing to challenge such a decree in a direct proceeding, surely he ought not to be permitted to question it indirectly. To permit him to do so would amount to an arbitrary exercise of power on the part of the Secretary, warranting the interposition of a court of equity.

But apart from the question of the conclusiveness of the decree of adoption we think the Secretary, under the facts stated, was without jurisdiction to reopen the decision of January 11, 1913. There is no averment or pretence that such decision was procured by fraud. The attack is upon a decree of adoption regularly entered by a court of competent jurisdiction in the State of Nebraska. The statute under which the Secretary is acting in terms declares that the decision of the department identifying the heirs of a deceased allottee shall be

final and conclusive. No rule of the department providing for a rehearing within a stated time, promulgated under the authority of the act of June 25, 1910, has been called to our attention. In Knight v. Lane, 228 U. S., 6, 10, it was held that a decision of the Secretary of the Interior revoking his prior approval of an adjustment between contestants, one of whom was a minor, and which was not arbitrary or capricious, but given after a hearing and in the exercise of the discretion confined to him by law, could not be reviewed by the courts. But there the application for rehearing was made within the thirty days within which such an application could be filed under the rules of the department, and there was no provision of the statute
24 that the original decision, when rendered, should be final and conclusive. Here the department regularly having determined the identity of the legal heirs of the deceased allottee its decision was final and no more subject to review than would have been a similar decision of a judicial tribunal. United States v. Stone, 2 Wall., 525; Noble v. Union River Logging Co., 147 U. S., 165; Lane v. Watts, 234 U. S., 525, 540.

Since the Secretary, under the facts stated, exceeded his powers in attempting to readjudicate the question as to who are the legal heirs of My Soul Tiebault, it follows that serious, if not irreparable, injury to appellants will result. As his legal heirs they are the equitable owners of the allotments of which he died seized, and a readjudication of the question of their heirship will not only involve them in unnecessary trouble and expense, but cast a cloud upon their title. The order will be reversed, with costs, and the cause remanded for an order directing the Secretary to recognize and enforce the departmental decision of January 11, 1913.

Reversed.

25 *Monday, April 5th, A. D. 1915.*

THE UNITED STATES OF AMERICA EX RELATIONE JULIA Lamere Mickadiet, nee Tiebault, and Alma Tiebault, appelants, *vs.* FRANKLIN K. LANE, SECRETARY OF THE INTERIOR.	No. 2762. April Term 1915.

Appeal from the Supreme Court of the District of Columbia. This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this court that the order of the said supreme court in this cause be, and the same is hereby, reversed with costs; and that this cause be, and the same is hereby, remanded to the said supreme court for an order directing the Secretary to recognize and enforce the departmental decision of January 11, 1913.

Per Mr. JUSTICE ROBB.

April 5, 1915

26 In the Court of Appeals of the District of Columbia.

UNITED STATES OF AMERICA, EX REL. JULIA LAMERE MICKADIET, nee Tiebault, and Alma Lamere Tiebault, appellants.
vs.
FRANKLIN K. LANE, SECRETARY OF THE INTERIOR. } No. 2762.

Petition for writ of error.

Comes now the appellee in the above-entitled cause, by his attorneys, and respectfully shows that on or about the fifth day of April, 1915, the Court of Appeals of the District of Columbia entered a judgment herein in favor of the appellants and against this appellee, reversing the judgment of the Supreme Court of the District of Columbia in favor of this appellee, in which judgment of the court of appeals aforesaid certain errors were committed, to the prejudice of the appellee, all of which will appear in detail from the assignment of errors filed with this petition.

He furthermore shows that the judgment of said court of appeals aforesaid involves and presents questions reviewable by the Supreme Court of the United States under the provisions of paragraph 6 of section 250 of the Judicial Code, being the act of March 3, 1911, for that the construction of the act of June 25, 1910 (36 Stat., 855)

27 is drawn in question by the appellee, defendant in the court below, who asserted and relied upon a construction of said statute contrary to the construction placed thereon by this court in its judgment aforesaid; to wit, that whereas this court holds and decides that when the appellee, acting under the authority conferred upon him by said act of June 25, 1910, determines the heirs of a deceased Indian allottee, such determination or decision is "final and conclusive" upon the Secretary of the Interior so that he has no jurisdiction thereafter, while the person and property of said heir is yet under his guardianship and within his control, to reopen and reconsider his decision as to said heirship, the appellee contended for and relied upon a construction of said statute (i. e., the act of June 25, 1910) at variance with and contrary to the decision of this court, in this: That the proper construction of said statute makes the decision of the Secretary of the Interior "final and conclusive" only in the sense that it is not reviewable by any other authority or tribunal, but that, until issuance of patent in fee simple, conveying the title of the United States in the allotted land to the heirs of the allottee, the decision is not "final and conclusive" upon the Secretary of the Interior and may be reopened and reviewed by him.

He furthermore shows that the judgment of this court aforesaid is reviewable by the Supreme Court of the United States under paragraph five of section 250 of said Judicial Code, in that this case draws in question fundamentally the validity of an authority exercised by the appellee under the United States; and in that this case

28 draws in question the existence and scope of the power and of his duty as an officer of the United States, to wit, as Secretary of the Interior.

Wherefore this appellee prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States, and that the mandate be stayed until further order.

PRESTON C. WEST,
Solicitor for the Department of the Interior,
C. EDWARD WRIGHT,
Asst. Attorney for the Department of the Interior,
Attorneys for Appellee.

(Endorsed:) In the Court of Appeals of the District of Columbia. No. 2762. United States of America ex rel. Julia Lamere Mcikadiet, née Tiebault, and Alma Lamere Tiebault, vs. Franklin K. Lane, Secretary of the Interior. Petition for writ of error. Court of Appeals, District of Columbia. Filed Apr. 21, 1915. Henry W. Hodges, clerk.

29 In the Court of Appeals for the District of Columbia.

UNITED STATES OF AMERICA EX REL. JULIA LAMERE Mickadiet, née Tiebault, and Alma Lamere Tiebault, appellants, *v.* FRANKLIN K. LANE, SECRETARY OF THE INTERIOR.	No. 2762.

Assignment of errors.

And now comes the appellee, by his attorneys, and says that in the record and proceedings aforesaid of the Court of Appeals of the District of Columbia, in the above-entitled cause, and in the rendition of the final judgment therein, manifest error has intervened to the prejudice of said appellee in this, to wit:

(1) That said court erred in reversing the judgment of the Supreme Court of the District of Columbia in favor of appellee and against the appellants, and in remanding the cause for an order directing the appellee to recognize and enforce the decision rendered in the Department of the Interior on January 11, 1913, in the matter of the heirs of My Soul Tiebault, a deceased Winnebago Indian allottee.

(2) That said court erred in not affirming the judgment of the Supreme Court of the District of Columbia rendered in this cause.

30 (3) The court erred in holding and deciding that the appellee, as Secretary of the Interior, has no jurisdiction, power,

or duty to readjudicate the question as to who are the legal heirs of said My Soul Tiebault under the facts set forth in the decision of said court and appearing in the record.

(4) The court erred in not holding and deciding that the appellee, as Secretary of the Interior, had full jurisdiction and power, and that it was his duty under the facts set forth in the decision of said court and shown in the record to reopen, reconsider, and readjudicate the question as to who are the legal heirs of said My Soul Tiebault.

(5) The court erred in failing to recognize and to sustain the validity of the authority exercised by the appellee under the United States and as an officer of the United States in and concerning the question as to who are the legal heirs of said My Soul Tiebault under the facts set forth in the decision of said court.

(6) The court erred in failing to recognize and to hold that under the provisions of the first section of the act of June 25, 1910 (36 Stat., 855), the Secretary of the Interior has exclusive jurisdiction to ascertain and determine who are the legal heirs of a deceased Indian allottee, and that said jurisdiction continues until such time as patent in fee simple, conveying the legal title out of the United States, issues.

(7) The court erred in failing to recognize and to hold that as long as said jurisdiction continues the Secretary of the Interior has authority to reopen, review, and reconsider a former decision
31 rendered by himself or his predecessor in office as to who are the heirs of a deceased Indian allottee.

(8) The court erred in its construction of said act of June 25, 1910, in that it held that the decision of the Secretary of the Interior as to who are the heirs of a deceased Indian allottee, once rendered by him or his predecessor in office, is final and conclusive on him and is not subject to reconsideration or review by him while he yet retains jurisdiction over the lands and person of such heirs and while the title to said land is yet in the United States.

(9) The court erred in holding and construing said act of June 25, 1910, to mean that a decision of the Secretary of the Interior as to who are the heirs of a deceased Indian allottee is final and conclusive upon him and that he is without power to reconsider and correct the same while the legal title to the land involved is yet in the United States.

(10) The court erred in holding that the appellee is without jurisdiction to reopen the decision of January 11, 1913, and to enquire into the validity of the decree of the County Court of Thurston County, Nebraska, whereby the appellants claim that they were legally adopted and thereby became the legal heirs of said My Soul Tiebault.

(11) The court erred in assuming that the appellee claimed the power or jurisdiction or intended to review and to vacate or ignore the decree of adoption passed by said county court for the County

of Thurston, Nebraska, for any cause set forth in the decision
32 of this court or for any cause other than a showing that said decree of adoption was void for lack of jurisdiction in the court to render the same either by reason of fraud affecting and vitiating the court's jurisdiction or for noncompliance with the provisions of the law of said State.

(12) The court erred in holding and deciding that upon appellants' petition for the issuance of patents in fee simple he had but one question within his jurisdiction to decide, namely, whether said appellants were capable of managing their own affairs and were hence entitled to such patents.

(13) The court erred in failing to recognize and to hold that upon the presentation of said petition for issuance of patents in fee it was competent for and within the jurisdiction of the Secretary of the Interior to reconsider and decide any and all questions appertaining as well to the right as to the capacity of the applicants to receive such patents in fee.

(14) The court erred in failing to recognize and to hold that the action of the appellee sought to be reviewed in this case, and in fact reviewed by said court in this case, was an action taken by the appellee within the exercise of a jurisdiction conferred upon him by statute, and that said action involved the exercise of judgment and discretion and was hence not reviewable by said Court of Appeals or any court.

Wherefore Franklin K. Lane, Secretary of the Interior, appellee in the above-entitled cause in said Court of Appeals,
33 prays that for the errors aforesaid and other errors appearing in the record of said Court of Appeals in said cause to the prejudice of the appellee, the said judgment of said Court of Appeals be reversed, annulled, and for naught esteemed, and that said cause be remanded to the said Court of Appeals with instructions to affirm the judgment of said Supreme Court of the District of Columbia in the cause rendered or for such further proceedings in said cause as may be determined upon by the Supreme Court of the United States, to the end that justice may be done in the premises.

FRANKLIN K. LANE,
Secretary of the Interior.

By his attorneys:

PRESTON C. WEST,
Solicitor for the Department of the Interior.
C. EDWARD WRIGHT,
Asst. Attorney for the Department of the Interior.

(Endorsed:) In the Court of Appeals of the District of Columbia. No. 2762. United States of America ex rel. Julia Lamere Mickadiet, née Tiebault, and Alma Lamere Tiebault vs. Franklin K. Lane, Secretary of the Interior. Assignment of errors. Court of Appeals, District of Columbia. Filed Apr. 21, 1915. Henry W. Hodges, clerk.

34 *Saturday, April 24th, A. D. 1915.*

THE UNITED STATES OF AMERICA EX RELATIONE JULIA Lamere Mickadiet, née Tiebault, and Alma Lamere Tiebault, appellants,
vs.
FRANKLIN K. LANE, SECRETARY OF THE INTERIOR. } No. 2762.

On consideration of the petition for the allowance of a writ of error to remove the above-entitled cause to the Supreme Court of the United States, and to stay the mandate until further order, it is by the court this day ordered that said petition be and the same is hereby granted.

35 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the justices of the Court of Appeals of the District of Columbia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals before you, or some of you, between The United States of America ex relatione Julia Lamere Mickadiet, née Tiebault, and Alma Lamere Tiebault, *and Alma Lamere Tiebault*, appellants, and Franklin K. Lane, Secretary of the Interior, appellee, a manifest error hath happened, to the great damage of the said appellee as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 24th day of April, in the year of our Lord one thousand nine hundred and fifteen.

[SEAL.] HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

36 UNITED STATES OF AMERICA, *ss:*

To The United States of America ex relatione Julia Lemere Mickadiet, née Tiebaut, and Alma Lamere Tiebault, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's

office of the Court of Appeals of the District of Columbia, wherein Franklin K. Lane, Secretary of the Interior, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard, Chief Justice of the Court of Appeals of the District of Columbia, this 24th day of April, in the year of our Lord one thousand nine hundred and fifteen.

SETH SHEPARD,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted April 24, 1915.

E. F. COLLADAY,
Counsel for Appellants.

(Indorsed:) Court of Appeals. District of Columbia. Filed Apr. 24, 1915. Henry W. Hodges, clerk.

37 Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 36, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of The United States of America ex relatione Julia Lamere Mickadiet, née Tiebault, and Alma Lamere Tiebault, appellants, vs. Franklin K. Lane, Secretary of the Interior, No. 2762, April term, 1915, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 27th day of April, A. D. 1915.

[SEAL.] HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

(Indorsement on cover:) File No. 24699. District of Columbia. Court of Appeals. Term No. 955. Franklin K. Lane, Secretary of the Interior, plaintiff in error, vs. The United States of America ex relatione Julia Lamere Mickadiet, née Tiebault, and Alma Lamere Tiebault. Filed May 1st, 1915. File No. 24699.

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In the Supreme Court of the United States.

OCTOBER TERM, 1915.

FRANKLIN K. LANE, SECRETARY OF THE Interior, plaintiff in error,
v.
THE UNITED STATES OF AMERICA EX REL. Julia Lamere Mickadiet, née Tiebault, and Alma Lamere Tiebault. } No. 449.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

MOTION TO ADVANCE.

Comes now the Solicitor General, appearing on behalf of the plaintiff in error, and respectfully moves the court to advance the above-entitled cause for hearing on a day convenient to the court.

Defendants in error, claiming to be the sole and only heirs at law of My Soul Tiebault, deceased, a member of the Winnebago Tribe of Indians, by reason of a decree of adoption entered by the County Court of Thurston County, State of Nebraska, whereby said My Soul Tiebault adopted said defendants in error as his children, filed in the Supreme Court of the District of Columbia a petition for a

27434—16

peremptory writ of mandamus to compel the Secretary of the Interior to pay over to them certain moneys collected under his supervision as the rents, issues, and profits from certain lands theretofore allotted as a 25-year trust allotment to said My Soul Tiebault under the act of February 8, 1887, 24 Stat. 388, and further to compel the Secretary of the Interior to carry into effect the judgment and decree of his predecessor under date of January 11, 1913, declaring that the estate of said My Soul Tiebault descended from him to the defendants in error in equal shares, and to issue to the latter a patent in fee simple therefor.

In answer to the rule to show cause which issued, the Acting Secretary of the Interior alleged *inter alia* that under the provisions of the act of May 8, 1906, 34 Stat. 182, the Secretary of the Interior is authorized, in his discretion, whenever he shall be satisfied that any Indian allottee of a trust patent is competent and capable of managing his or her affairs at any time to cause to be issued to said allottee a patent in fee simple; that upon the application of the defendants in error for the issue of a patent in fee simple objection to its issue was made by one Harrison Tiebault, claiming to be an heir of said My Soul Tiebault, on the ground that the former desired to file newly discovered evidence tending to show that the decree of adoption of the County Court of Thurston County was void for the reason that it had been secured by fraud; and that the Secretary of the Interior had the power to

review the action taken by his predecessor in the premises for the reason that under the act of June 25, 1910, 36 Stat. 855, he is vested with full and exclusive jurisdiction to ascertain the legal heirs of an Indian allottee deceased prior to the expiration of the 25-year trust period and before the issuance of a patent in fee.

A demurrer to the answer was overruled and defendants in error having elected to stand on their demurrer the Supreme Court of the District entered an order dismissing the petition. An appeal was taken to the Court of Appeals of the District, which reversed the case, the latter court holding that the Secretary of the Interior was without jurisdiction to reopen the decision of his predecessor and directing that an order be entered directing the Secretary of the Interior to recognize and enforce the departmental decision of January 11, 1913.

The case is of importance to the Department of the Interior in the administration of Indian affairs, for the reason that its determination will govern the action of the Secretary in a number of similar cases now pending.

Opposing counsel concur.

JOHN W. DAVIS,
Solicitor General.

FEBRUARY, 1916.

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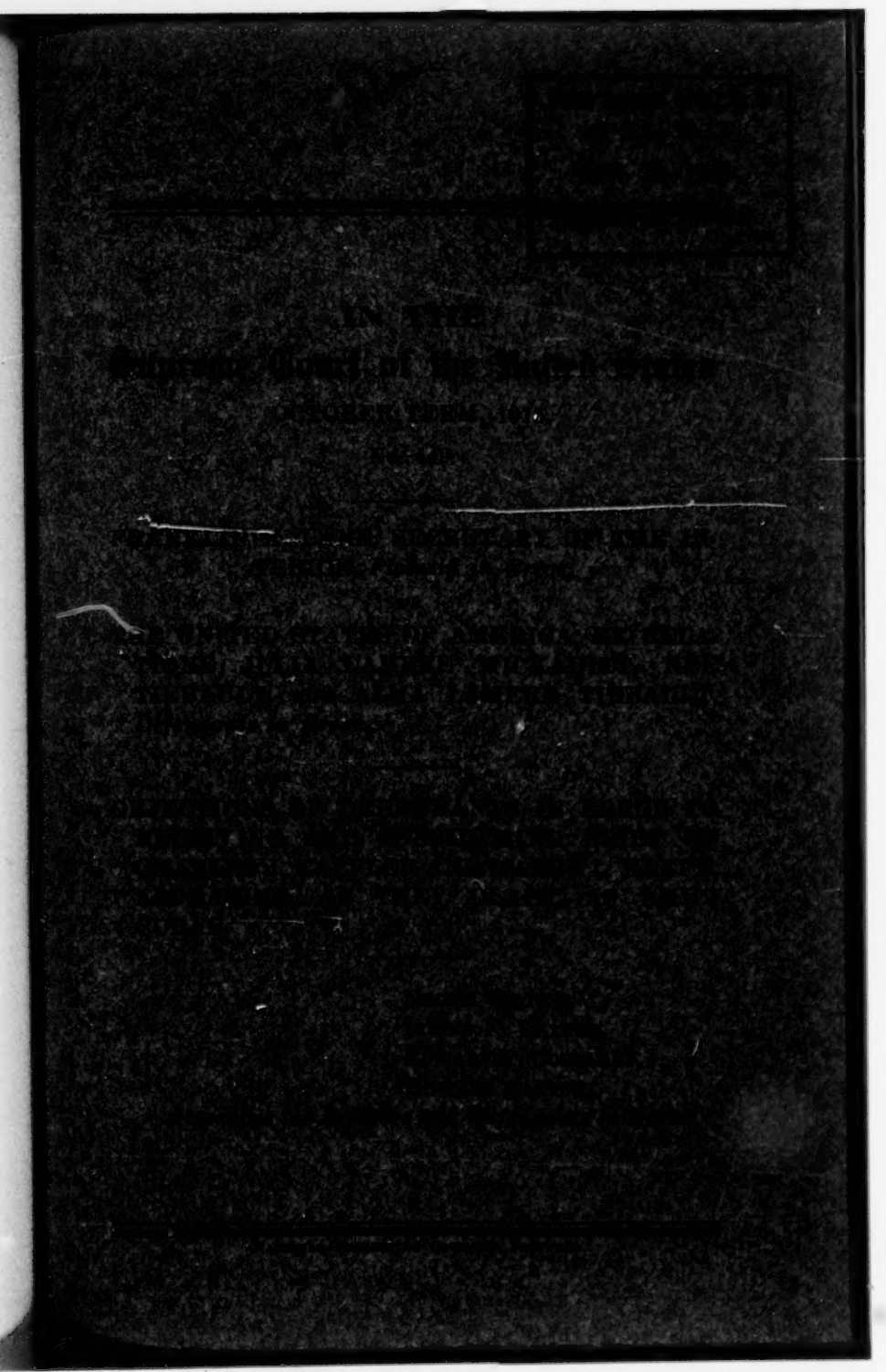

IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

No. 449.

FRANKLIN K. LANE, SECRETARY OF THE INTERIOR, *Plaintiff in Error,*

vs.

THE UNITED STATES OF AMERICA, EX RELATIONE JULIA LAMERE MCKADIET, NEE TIEBAULT, and ALMA LAMERE TIEBAULT, *Defendants in Error.*

OBJECTIONS OF DEFENDANTS IN ERROR TO RECEIVING AND CONSIDERING BRIEF OF CHARLES J. KAPPLER AND HARRY L. KEEFE, APPEARING, AS THEY CLAIM, AS AMICI CURAE.

May it please your Honors:

Defendants in error, by leave of Court granted April 3, 1916, object to this Court receiving and considering herein the brief of Charles J. Kappler and Harry L. Keefe, which was filed by leave of the Court upon the ground that they appeared as friends of the Court, and as grounds for their objections state:

FIRST: That said brief shows upon its face that it is filed for and upon behalf of Harrison Tiebault, also known as Harrison Tebo, and others, who were defeated upon the hearing before the Secretary of the Interior,

after full hearing, which resulted in the finding and judgment by said Secretary against them of January 11, 1913, and with reference to which the defendants in error have petitioned the Court below for a writ of mandamus to compel the enforcement thereof.

SECOND: That said brief, for the most part, is a mere discussion of matters which were in controversy before the Secretary of the Interior and determined by his said finding and judgment dated January 11, 1913, against the contentions of said Harrison Tebo and others.

THIRD: That said brief, for the most part, refers to and discusses matters not contained or found in the record in this case, and in no sense germane thereto.

FOURTH: This cause comes before this Court upon the demurrer of defendants in error to the return of plaintiff in error to our application for a writ of mandamus, based upon undisputed facts; there being no dispute as to facts in the case herein between the parties hereto.

FIFTH: That defendants in error ought not at this late day to be required to meet matters of disputed evidence discussed in said brief, and which can in no way be involved in a correct determination by this Court of questions of law presented by the record.

Respectfully submitted,

NORRIS BROWN,
IRVING F. BAXTER,
EDWARD F. COLLADAY,
HOWARD SAXTON,
Attorneys for Relators and Defendants in Error.

Office Supreme Court, U. S.
FILED
MAR 30 1916
JAMES D. MAHER
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 449.

FRANKLIN K. LANE, SECRETARY OF THE INTERIOR,

Plaintiff in Error,

v.

THE UNITED STATES OF AMERICA EX RELATIONE JULIA LAMERE MICKADIET, NÉE TIEBAULT, AND ALMA LAMERE TIEBAULT.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF IN BEHALF OF RELATORS.

NORRIS BROWN,
IRVING F. BAXTER,
EDWARD F. COLLADAY,
HOWARD SAXTON,
Attorneys for Relators.

BLOOD BROS., OMAHA.

TABLE OF CASES.

	Page
Hallowell v. Commons, (210 Fed. 793)	8
Bond v. U. S., (181 Fed. 613)	9, 10
Pal-ata-yakot v. U. S., (188 Fed. 387)	10
U. S. v. Tynea, (11 Wall. 88, 20 L. Ed. 153)	10
Railroad Co. v. Grant, (96 U. S. 398, 25 L. Ed. 231)	10
Parr v. Colfax, (197 Fed. 302)	10
Oglesby v. Attrill, (14 Fed. 214)	11
Allen v. Wilson, (21 Fed. 881)	11
Baptist v. Farwell Transp. Co., (29 Fed. 180)	12
Germania Iron Co. v. James, (89 Fed. 811)	14
Noble v. Union River Logging Co., (147 U. S. 165)	14, 15
Emblen v. Lincoln Land Co., (102 Fed. 563, 13 Sup. Ct. 271)	14
U. S. v. Stone, (2 Wall 525, 17 L. Ed. 765)	15
Lane v. Watts, (234 U. S. 525, 540)	16
Ballinger v. U. S. ex rel Frost, (216 U. S. 240)	16
Union Terminal R. Co. v. St. B. of Com., (38 Pac. 290)	17
Renaud v. St. Ct. of Mediation, (124 Mich. 648, 83 Am. St. 346)	18
Packard v. Craig, (45 Pac. Rep. 1033)	19
Ness v. Fisher, (223 U. S. 683, 691)	19
Pace v. Klink, (51 Ga. 220)	21
Fergusun v. Herr, (64 Neb. 662)	22, 29
Jones v. Leeds, (82 N. E. Ind. 536)	22
Brown v. Brown, (101 Ind. 340)	22, 30
Paul v. Davis, (100 Ind. 422)	23
Humphreys v. Davis, (100 Ind. 274)	23
Wolf's Appeal, (Pa. 13 Atl. 760)	24
Cizek v. Cizek, (96 N. W. Neb. 657)	24
Chaloner v. Sherman, (215 Fed. 867)	24
U. S. v. Throckmorton, (98 U. S. 61, 25 L. Ed. 93)	26
Freeman on Judgments, (4th Ed., Sec. 334)	26
In re Williams, (102 Callif. 70, 41 Am. St. Rep. 163)	28
In Van Matre v. Sankey, (148 Ill. 536, 39 Am. St. Rep. 196)	28
In re Johnson, (98 Calif. 543)	28
Parsons v. Parsons, (101 Wis. 76, 1 Ruling Case Law, 624)	28

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 449.

FRANKLIN K. LANE, SECRETARY OF THE INTERIOR,

Plaintiff in Error,

v.

THE UNITED STATES OF AMERICA EX RELATIONE JULIA LAMERE MICKADIET, NÉE TIEBAULT, AND ALMA LAMERE TIEBAULT.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF IN BEHALF OF RELATORS.

In the trial court, relators filed a petition and affidavit for writ of mandamus to be directed against the plaintiff in error, the Secretary of the Interior, directing and requiring him to recognize and enforce the departmental decision of his predecessor in office of January 11, 1913. An alternative writ was issued. The Secretary filed his return to the rule to show cause why

the writ should not issue. To the return these relators demurred. The demurrer was overruled and case dismissed. Due and timely exceptions were taken by the relators to said judgment and allowed by the court and the cause was duly appealed to the Court of Appeals for the District of Columbia, where the judgment of the lower court was reversed and judgment rendered in favor of relators as in their petition prayed, directing the Secretary to recognize and enforce the departmental decision of January 11, 1913, (43 Appeal Cases District of Columbia, 414). The opinion and judgment of the Court of Appeals for the District of Columbia will be found at pages 21-25 of the Record herein. Thereupon this cause was brought to this Court by the plaintiff in error for review.

PROPOSITIONS OF LAW.

There is no disagreement as to the facts. The petition of the relators and the return thereto are in substantial accord. The demurrer to the return and the assignments of error appearing in the Record present, in substance, the following propositions of law:

1. The Secretary of the Interior is without jurisdiction to annul a decision of his predecessor relating to property rights because such decision is a judicial act and can only be reviewed, if reviewable at all, by the courts.

2. The Secretary of the Interior is without power under the Act of June 25, 1910, to review, vacate or ignore the adoption decree entered by the County Court of Thurston County, Nebraska, on the 4th day of November, 1896.

3. The decree of adoption of the County Court of Thurston County, Nebraska, acting within its jurisdic-

tion, from which no appeal was taken, is not subject to collateral attack, and the Secretary of the Interior is without power or jurisdiction to annul, modify, vacate or ignore said decree.

4. Harrison Tebo, who made the application to have the decision of the Secretary of the Interior heretofore rendered in favor of these relators reviewed and vacated, together with all other blood relatives of the said My Soul Tiebault, deceased, are estopped in law to question the validity of said decree of adoption, said decree being final and binding upon My Soul Tiebault in his lifetime and upon his heirs after his death.

5. The petition of the relators to the Secretary of Interior under the provisions of the Act of May 8, 1906, (34 Stat. 182), to issue to them patents in fee simple presented but one question within the jurisdiction of the Secretary to decide, namely, whether said applicants were capable of managing their own affairs and were hence entitled to such patents. Said petition did not, and could not, raise any issue as to their heirship.

STATEMENT OF FACTS.

The relators are members of the Winnebago tribe of Indians. In 1896, by adoption procedings in the County Court of Thurston County, Nebraska, they were adopted by My Soul Tiebault, also a member of said tribe, and an allottee. The mother and father of the relators appeared in the County Court and consented to the adoption. The proceedings before the County Court, which has sole and exclusive jurisdiction under the Constitution and the Statutes of the State of Nebraska in all adoption proceedings, were set out in full in the exhibits attached to the petition filed herein. The return of the respondent in no way questions the regularity of the adoption proceedings. All the jurisdic-

tional steps were taken conferring on the County Court of Thurston County, full and absolute jurisdiction of the subject matter and of the parties as shown in detail by the exhibits attached to the petition.

Subsequently a daughter by blood of My Soul Tiebault, who was an allottee, died during the lifetime of the father. Under the law he succeeded to her allotment. Subsequently My Soul Tiebault died seized of his own allotment and the one inherited from his daughter; both subject to the 25-year trust period which did not expire until 1915.

During the lifetime of My Soul Tiebault and after his adoption of the relators herein, they were within his control as father and lived with him except during the times they were away at school. No one during his lifetime questioned the validity of the adoption decree. He died without issue. After his death, certain nephews and nieces questioned the adoption decree and laid claim to the allotments of which he was seized at the time of his demise.

In order to protect themselves and to secure to themselves the beneficial use of the estate of My Soul Tiebault, the relators brought an action in the Federal Court at Omaha, Nebraska, as heirs at law of My Soul Tiebault and in that suit made the several nieces and nephews of My Soul Tiebault, including Harrison Tebo, and the United States all defendants. The defendants appeared in said court and filed their several demurrers assailing the validity of the adoption decree set out in the bill of complaint in said suit. The Court on argument and consideration overruled the demurrers and directed the defendants to answer. These proceedings in the Federal Court were all had prior to the repeal of the Act of Congress of February 6, 1901 (31 Stat.

760), and prior to the enactment of Congress of date of June 25, 1910 (36 Stat. 855). The defendants complied with the order of the court, answered the bill of complaint denying the validity of the adoption decree. Testimony was taken on the issue raised and the cause was pending in said court and ready to be submitted at the time Congress passed the Act of June 25, 1910, which operated as a repeal of the Act of February 6, 1901, which earlier Act conferred jurisdiction in such matters on the Federal Court. When the Act of June 25, 1910, was passed the case in the Federal Court was dismissed for want of jurisdiction, and it was stipulated and agreed by all the parties thereto, including the United States, not only that such cause should be dismissed and each party pay his own costs, but also that the record and the testimony already taken in said cause should be forwarded to the Honorable Secretary of the Interior for his consideration since the Act of 1910, had conferred on the Secretary sole and exclusive jurisdiction to determine who, in fact, were the heirs of an allottee Indian at the time of his death.

The stipulation of the parties further provided that they should have the right to offer additional testimony before the Secretary and the law gave the Secretary the right to make such investigation as he might see fit under such rules and regulations as he might determine, for the purpose of ascertaining who were the heirs of My Soul Tiebault. Subsequently in conformity with the stipulation referred to and as provided in the Act of June 25, 1910, the Secretary of the Interior proceeded to exercise the jurisdiction conferred upon him by the law and appointed one G. M. Tunnison as a Special Examiner, in his stead and for him, to proceed to Thurston County, the home of the Winnebago tribe and the home of all the parties interested, to subpoena witnesses and examine them under oath and to receive whatever

testimony any of the parties might offer in addition to the testimony taken in the Federal Court, and to report his findings, on the issued raised, to the Secretary.

Mr. Tunnison, as agent of the Secretary, carried out the instructions and after hearing all the testimony including that of the Judge of the County Court of Thurston County, and many other witnesses, reported in the fall of 1912, to the Secretary all the testimony taken by him and his conclusion thereon that the relators were the sole heirs at law of My Soul Tiebault, that the adoption decree was valid and regular in all respects and as such heirs they were entitled to inherit his estate in accordance with the laws of the State of Nebraska.

The report of the Agent Tunnison was first made to the Commissioner of Indian Affairs in December, 1912, who approved the same and forwarded it to the Secretary of the Interior for his consideration. Afterward, on the 11th day of January, 1913, said Secretary of the Interior acting through his Assistant, Mr. Laylin, approved in all respects the findings of the Special Agent, Mr. Tunnison, and the conclusion of the Indian Commissioner.

In accordance with this decision of the Secretary in January, 1913, which amounted to, and was, a decree and judgment involving property rights, the rentals and profits arising from the estate of My Soul Tiebault were distributed by the Secretary, and from time to time by his successor in office, respondent herein, to the relators.

No motion for a rehearing and no protest by any of the nieces and nephews, who were parties to the original suit and were parties to the subsequent investiga-

tion by the Secretary of the Interior, was made or filed with the Department until several months after the retirement from office of Secretary Fisher, and not until your relators had asked the present Secretary to again exercise his discretion as provided by the Act of May 8, 1906, (34 Stat. 182), and issue to them as heirs at law of My Soul Tiebault, a patent in fee simple before the expiration of the trust period. This application was made by the relators in the month of September, 1913, and as required in the Act under which it was filed, notice of the application was duly posted at the Winnebago Agency. It was not until this notice was posted that Harrison Tebo appeared and filed his protest against the granting of said application and also filed a formal motion for a rehearing of the decision of the Secretary entered January 11th, 1913.

The respondent in the case at bar entertained said rehearing motion and overruled the objection of relators to his jurisdiction to rehear, review, vacate or modify, in any degree, the decision of his predecessor, dated January 11, 1913.

On these facts the relators insist that the respondent is without jurisdiction and power under the law to retry the issue decided by the former Secretary, and ask the aid of the court in compelling the present Secretary to observe and carry out the judgment and decision of his predecessor. This is not an action to compel the present Secretary to issue a fee simple patent of the lands in controversy to the relators. The law does not require him to do this until the expiration of the trust period although the law gives him the discretionary power to do so if he chooses to exercise it. The only relief asked for here is that the beneficial use of the estate, its rentals and profits, be paid directly to the relators as heirs at law of My Soul Tiebault, OR, to

be expended by him for their benefit; which rentals and profits are being withheld from relators by order of the Secretary.

The Court will observe that in the return of the respondent he concedes the present right of the relators to these rentals and profits if he is without power to rehear or retry the issue raised and settled by the former Secretary in his decision of January 11, 1913, to-wit: the validity of the adoption decree.

ARGUMENT.

I.

The Secretary of the Interior is without jurisdiction to annul the decision of his predecessor of January 11, 1913, for the reason that such decision was a judicial act and can only be reviewed, if at all, by the courts.

It is our contention that the Secretary of the Interior having, under authority given him under the Act of June 25, 1910, (36 Stat. 855), ascertained and identified who were, in fact, the heirs of My Soul Tiebault under the laws of Nebraska, and his decision being final and conclusive under the provisions of said Act, the courts alone would have the right to interpose and protect the equities and rights of persons in lands under the statutes where such rights are infringed because of erroneous procedure of the officers of the Interior Department of this government. It is this principle which the relators have invoked in this case (Hallowell vs. Commons, 210 Fed. 793).

Until the approval of said Act the courts had original and exclusive jurisdiction over heirship matters. It has been repeatedly held by the courts since the approval of the Act that transferred this jurisdiction from the courts to the Secretary of the Interior. The language of the Act is very clear and definite; the first paragraph reads as follows:

"That when any Indian to whom an allotment of land has been made, or may hereafter be made, dies before the expiration of the trust period and before the issuance of a fee simple patent, without having made a will disposing of said allotment as hereinafter provided, the Secretary of the Interior, upon notice and hearing, under such rules as he may prescribe, shall ascertain the legal heirs of such decedent, and his decision thereon shall be final and conclusive."

This Act has been interpreted by the courts in many cases. Bond v. United States, 181 Fed. 613, was an Indian allotment case and the validity of the allotment was put in issue under the old Act. While the suit was pending the Act of June 25, 1910, was passed. The Circuit Court of Appeals in discussing its own jurisdiction held that the Act of June 25, 1910, deprived it of jurisdiction and transferred the subject matter and the parties to the exclusive jurisdiction of the Secretary of the Interior. The rule announced in that case is succinctly stated in the syllabus which reads as follows:

"Act. Cong. June 25, 1910, c. 431, 36 Stat. 855, providing that, if an Indian allottee dies before the expiration of the trust period and the issuance of a patent without having disposed of his allotment by will, the Secretary of the Interior shall ascertain the legal heirs of such decedent, and his decision shall be final and conclusive, operated to repeal Act. Cong. Feb. 6, 1901, c. 217, 31 Stat. 760, conferring on Circuit Courts of the United States jurisdiction over matters growing out of the execution of the allotment act, and deprived the courts of jurisdiction to determine such heirship, and since the Act of 1910 contained no saving clause, the authority of the courts under the repealed Act of 1901, immediately ceased in so far as pending causes were concerned."

The Act was again before the courts in Pel-ata-yakot v. United States, 188 Fed. 387, which was an Indian case. After quoting the jurisdictional part of the Act the court in the opinion held:

> "The provision is comprehensive and clearly evinces the intention of Congress to confer *exclusive* jurisdiction to decide such controversies upon the Secretary of the Interior. That being true, it must be held that by implication the existing Act conferring jurisdiction upon the courts was repealed. United States v. Tynea, 11 Wall 88, 20 L. Ed. 153. The repeal thus affected being without reservation as to pending cases, the present case although commenced prior to the passage of the repealing Act, must fall with the act upon which it rested. Railroad Co. v. Grant, 96 U. S. 398; 25 L. Ed. 231. Precisely the same question was involved in Bond v. United States (C. C.) 181 Fed. 613, and with the conclusion there reached I am in accord."

In Parr v. Colfax, 197 Fed. 302, the court reaffirmed the rule and held:

> "That such act deprived the Circuit Court of Appeals of jurisdiction to entertain an appeal from a decree sued out after the statute went into effect, since it deprived the court of jurisdiction to enforce any judgment it might render on such appeal, jurisdiction of the subject having been transferred from the courts to the Secretary of the Interior."

It will be observed that the jurisdiction conferred upon the Secretary of the Interior by the language quoted is not only exclusive but final and conclusive. Such are the terms employed in the Act itself. Congress, no doubt, had in mind the imperative need of conferring upon the Secretary of the Interior judicial power so that his decision when made would be clothed with that finality and security which inheres in a judicial decree.

Any other construction of the Act would leave the decision of a Secretary of the Interior of no permanence and his judgment when entered in a contest involving heirship and property rights nothing more than a mere expression of opinion, subject to review and annulment by either himself or his successor in office. Nor would it be necessary for the annulment to rest on either evidence or reason. For, if the Secretary is conceded the power to annul a decision of his predecessor in the absence of any Congressional legislative warrant for such annulment, he is left free and unimpaired by any statutory rule or by any limitation whatever.

The very fact that Congress failed to provide for rehearings and failed to confer any express power on the Secretary to annul the decisions of his predecessor is very strong and indeed is conclusive evidence of the fact that Congress never intended that the decision of the Secretary when once made should be subject to review by his successor in office. It would be a very strange situation, indeed, if one Secretary can take away property rights established under the law by a former Secretary when Congress and State Legislatures have steadfastly declined to confer upon a judge of the Federal or State courts the power to set aside decisions of their predecessors in office and have even declined to confer upon them the power to set aside their own decisions when entered at a prior term of court.

In Oglesby v. Attrill, 14 Fed. 214, it was held:

> "A decision in a case rendered by one judge of the Circuit Court is not open for review by any other judge sitting in the same court and in the same case."

Also, in Allen v. Wilson, 21 Fed. 881, it was held:

> "The Circuit Courts of the United States have no power to set aside, reverse, or modify a judg-

ment at law or a decree in chancery after the term at which it was entered."

Also, in Baptist v. Farwell Transp. Co., 29 Fed. 180, it was ruled:

> "A change in the interpretation of a law applicable to a case prosecuted to judgment does not entitle the party who was cast in the suit by reason of the prior interpretation to reopen the controversy."

These authorities quote the rule. Its soundness is no longer questioned by the profession. The reason for the rule is obvious. Every judicial decree to have any finality, and property rights accruing thereunder to have any security, make the rule necessary.

Prior to the Act of June 25, 1910, the question of who were the rightful heirs would have been submitted to the courts under the law then in existence and the judgment of the courts in the premises would have been final under the old law. It is not conceivable that Congress when it took from the courts jurisdiction of this matter and by the Act of June 25, 1910, placed the jurisdiction in the Secretary of the Interior intended his decisions should be any less final. Had such been the intention of Congress, it would have provided a procedure under which one Secretary of the Interior could open up, review and annul the decisions of his predecessor. This, Congress failed to do.

The relators contend, therefore, that the learned Justice of the Court of Appeals, in his opinion in this cause before said court, was right when he held that the Act of June 25, 1910, (36 Stat. 855), "merely clothed the Secretary with jurisdiction to *identify* the legal heirs of such decedent, and that in so doing he was as much bound by the laws of descent in the jur-

isdiction where the lands were located as would be any other tribunal" (Record p. 23).

II.

The Secretary of the Interior is without power under the Act of June 25, 1910, to review, vacate or ignore the adoption decree entered by the County Court of Thurston County, Nebraska, on the 4th day of November, 1896.

In the case at bar the issue of whether the adoption decree was valid or whether it had been fraudulently entered by the county court was tried out before the former Secretary. The evidence on that issue was taken, heard and the truth first determined by the personal representative and appointee of the Secretary of the Interior, who, as examiner investigated the matter and made a report to the Indian Commissioner, which report was by the Indian Commissioner transmitted to the Secretary of the Interior and with it was submitted all the evidence on all phases of the case including the fraud issue, and when the former Secretary of the Interior announced his judgment on that issue, his decision became final and conclusive. The rights of the parties became thereby established and under that judgment distribution has since partially been made. In the absence of express statutory authority the present Secretary of the Interior is without power and jurisdiction to set aside the judgment of the former Secretary.

In the administration of the public lands of the country the Secretary of the Interior is given jurisdiction to determine the issue of fraud practised by entrymen against the government, of fraud by one entryman against another. When the Secretary of the Interior under the Public Lands Act proceeds to investigate, to hear testimony and to decide the issue who

is rightfully entitled to a patent or to a homestead entry, his decision thereon is not reviewable by his successor in office. On this point the courts have ruled in language that cannot be doubted and the ruling is supported by a logic that cannot be questioned.

In Germania Iron Co. v. James, 89 Fed. 811, the court held:

> "Neither the Secretary of the Interior nor the Commissioner of the general land office has power to make retroactive decisions abrogating rules of the land department; and such a decision, giving preference to an application made in violation of the rules in force when it was made over an entry made in accordance with such rules, is an error in law reviewable by the courts."

Also, in Noble v. Union River Logging Co., 147 U. S. 165, the court held:

> "The Secretary of the Interior has no authority to annul the action of his predecessor in office approving the location of a railroad right-of-way over public lands under the Act of March 3, 1875, on the ground that such approval was obtained by misrepresentation and fraud, and that the railroad was not used as a common carrier for hire, but merely to carry property belonging to its owners; for the existence of the railroad with the duties of a common carrier was a quasi jurisdictional fact which the prior Secretary had the authority to determine, and his action therein is not subject to collateral attack."

Also, in Emblen v. Lincoln Land Co., 102 Fed. 563, the court in the syllabus held:

> "A Secretary of the Interior has no power to annul a decision of his predecessor which determines the rights of the parties to a consent for entry of public lands; such a determination being a judicial act which can only be reviewed by the courts."

In support of the rule quoted the court speaking through Judge Shiras said:

> "'The history of the case, as recited in the bill, shows that the decision of the register and receiver at Akron, dismissing complainant's contest and affirming the validity of the Weed entry, had, upon appeal, been confirmed by the Commissoner at Washington, and on appeal had been finally confirmed by the Secretary of the Interior, John W. Noble, under date of January 9, 1893. The averments of the bill further show, that, after John W. Noble had been succeeded in the office by Secretary Smith, a petition for a review of the order made by Secretary Noble was filed in the office of the Secretary of the Interior, and was by him entertained and granted, and the case was sent back to to the local land office for a further hearing on the facts. What effect on the rights of the parties had this order granted by Secretary Smith, whereby it was sought to nullify and set aside the final judgment of the land department upon the question of the validity of the Weed entry, evidenced by the order of Secretary Noble confirming on appeal, the action of the commissioner of the general land office, which in turn confirmed the decision of the register and receiver? Is it open to each succeeding Secretary of the Interior to rehear cases decided by his predecessor in office? In Noble v. Railroad Co., 147 U. S. 165; 13 Sup. Ct. 271; 37 L. Ed. 123, it is said, 'A revocation of the approval of the Secretary of the Interior, however, by his successor in office was an attempt to deprive the plaintiff of its property without due process of law, and was therefore void. As was said by Mr. Justice Grier in U. S. v. Stone, 2 Wall 525; 17 L. Ed. 765, one officer of the land office is not competent to cancel or annul the act of his predecessor. That is a judicial act and requires the judgment of a court.' "

Stone v. United States, 69 U. S. 525; 2 Wall, was an Indian case. One of the questions involved was the

right of the Secretary of the Interior to overrule the decisions of his predecessor and on that question the court speaking through Justice Grier, among other things said:

> "The Secretary of the Interior transcended his authority when he attempted to overrule the acts of his predecessor and ordered survey to be made north of that line to include the land now in question."

It will be observed this was an early decision of the Supreme Court and announces the rule contended for here. This rule has never been modified in the slightest degree by any court since it was first pronounced.

The rule contended for was upheld in the case of Lane v. Watts, 234 U. S. 525, 540, wherein this Court affirmed the decree of the Supreme Court of the District of Columbia, enjoining the Secretary of the Interior and the Commissioner of the General Land Office from clouding the title to certain lands in controversy by an attempted revocation of the action of a former Land Commissioner in approving the location of said lands.

This Court also adhered to the rule in the case of Ballinger v. U. S. ex rel Frost, 216 U. S. 240, which was a mandamus suit to compel the delivery of a patent. In the opinion of the Court at page 249, Mr. Justice Brewer used language quite pertinent here:

> "Whenever, in pursuance of the legislation of Congress, rights have become vested, it becomes the duty of the courts to see that these rights are not disturbed by any action of any executive officer, even the Secretary of the Interior, the head of a department. However laudable may be the motive of the Secretary, he, as all others, is bound by the provisions of Congressional legislation."

In the case at bar the controversy was submitted to Secretary Fisher under the Act of June 25, 1910, and acting thereunder he rendered his decision upon the merits through his assistant, Mr. Laylin, January 11, 1913, finding that the relators were the heirs by legal adoption of My Soul Tiebault, deceased. Under the provisions of said Act his decision was final and conclusive as against the whole world, including his successor in office, the plaintiff in error herein.

The state courts have uniformly agreed with the rule held in the Federal authorities cited above.

Union Terminal R. Co. v. Board of Railroad Commissioners, 38 Pac. Rep. 290, was a Kansas case in which the power of the State Board of Railroad Commissioners to review and vacate its own decision made at a former time was before the Supreme Court of that state. In discussing the question among other things the court said:

> "It is conceded that ordinarily, when condemnation commissioners have made their decision and report, their power is at an end; but it is said that the board of railroad commissioners is a continuing body, having general supervision over the railroads of the state, and that they are not to be regarded as functus officio upon the rendition of a decision in a crossing case. The power which they exercise in condemning a crossing is derived from the condemnation statute of 1887, and not from the general law investing them with supervisory power over railroads. In a proceeding to condemn a right-of-way for a railroad, county commissioners, which are a continuing body, are authorized to act; and it will be conceded that when they have acted, and made their report their authority as condemnation commissioners is at an end. They cannot rehear the application to condemn, nor disturb the award and decision which they have previously made. No more can the board of railroad commis-

sioners after they have heard an application and rendered their decision thereon."

The Supreme Court of Michigan in Renaud v. State Court of Mediation and Arbitration, 124 Mich. 648, 83 Am. St. 346, had before it the question of whether or not the defendant, a state court created by statute, to whose jurisdiction under the Act certain matters were referred, had the power to grant rehearings on cases formerly decided by it. This is a very strong case and discusses at length the public policy of the legislative branch of the government in the creation of courts or tribunals which shall have exclusive jurisdiction of certain matters, and how far the legislature could go in limiting the jurisdiction conferred and whether or not a court so created and with its jurisdiction defined had any inherent power to grant rehearings of matters in which it had rendered judgment. The holding of the court was that the power to grant rehearings did not exist and could not be exercised by a board or a court unless the legislature had given express authority to do so. In discussing the last question the court used the following language:

"We have now come to the second question: Has the court a right to grant a rehearing after it has once rendered its decision? From what has already been said it is apparent that the purpose to be served by the establishment of this court is to have a speedy and inexpensive disposition of the differences submitted to it. It was not the purpose of the legislature to create what we ordinarily understand by a court of law. The constitution provides that these courts shall have such powers and duties as shall be prescribed by law. The law which called this court into existence is the limit of its power. The act nowhere authorizes the court to grant a rehearing. When its decision has been rendered and filed, it has exhausted its power in a given case."

The Supreme Court of California in Packard v. Craig, 45 Pac. Rep. 1033, in discussing the power of the court to entertain a motion for rehearing in a case heard and decided by the said court, held that the court was without jurisdiction and power to grant a rehearing or to entertain a motion for a rehearing in the absence of legislative authority conferring such power.

As was well stated by Mr. Justice Robb in delivering the opinion in this case in the Court of Appeals, "The Act of June 25, 1910, (36 Stat. 855), clothed the Secretary with exclusive jurisdiction to ascertain 'the legal heirs of such decedent.' His decision upon this question, the act specifically declares, 'is final and conclusive.' But that does not mean that he could arbitrarily ignore the legal heirs of a deceased allottee and decide in favor of a collateral heir or a stranger in blood. Such a decision would be arbitrary or capricious and not sustainable under any view of this act. (Ness v. Fisher, 223 U. S. 683, 691" (Record, p. 23).

III.

The adoption decree of the County Court of Thurston County, Nebraska, acting within its jurisdiction, from which no appeal was taken, is not subject to collateral attack and the Secretary of the Interior is without power or jurisdiction to annul, modify or vacate said decree.

The decree of adoption duly entered in accordance with the laws of the State of Nebraska, by the County Court of Thurston County of said state is not subject to review or annulment by any Secretary of the Interior. It is a final decree of a court of record having jurisdiction of adoption proceedings and is not subject to collateral attack. It was subject to review in the appellate courts of said state if appellate proceedings were instituted to review the adoption decree. It had been

permitted to stand unquestioned by anybody for ten years and until after the death of My Soul Tiebault, and is clothed with all the sanctity and finality that attach to a court decree.

The language of the Act of June 25, 1910, gives to the Secretary of the Interior exclusive and final jurisdiction to "ascertain the legal heirs" of the deceased but nowhere in the Act is the Secretary vested with power to review or assail the validity of a decree in a court of record which has already determined who some of the heirs are. It must be remembered at all times in the consideration of the question at issue in this case that the property of an allottee Indian, who dies without will in the state of Nebraska, descends to the heirs of the deceased according to the laws of said state. Congress nowhere undertakes to distribute the estate of a deceased allottee Indian but it expressly declares that such distribution shall be had "in accordance with the laws of the state or territory where the land is located" (Act of February 8, 1887).

When the County Court of Thurston County, Nebraska, entered its decree that the Lamere children were fully and legally adopted by the said My Soul Tiebault and gave the children the name of Tiebault and therein expressly decreed that they shall have all the legal rights, privileges, immunities and heirships the same as if they had been born to the said My Soul Tiebault in lawful wedlock, the County Court was acting within its jurisdiction of the subject matter and in accordance with the laws of the state where the property of the owner was located. To hold that the Secretary of the Interior at this time, 18 years after the decree of the court was entered, has the power and jurisdiction to entertain a collateral attack on said decree is to give to the Secretary a power and jurisdiction unwarranted

by the law and unaccorded to any court in the land, is revolutionary and destructive of that protection which the solemn judgment of the courts has always extended since our judicial system was established.

In Pace v. Klink, 51 Ga. 220, it was held:

> "An heir is one who takes an estate by operation of law on the death of the owner. It is not necessary that the heir shall be of the blood of the deceased."

The County Court of Thurston County, acting within its jurisdiction, determined and decreed 20 years ago who two of the heirs at least were of My Soul Tiebault. The decree was entered as provided by law, and in accordance with its provisions, and is in full force and effect and is not subject to collateral attack.

It was not alleged in the Secretary's return herein that the County Court of Thurston County, Nebraska, was without jurisdiction in the premises nor that its jurisdiction had been fraudulently invoked. The jurisdiction of the court in which the adoption proceedings were had is not questioned here nor is it denied that, if the decree rendered by that court is to stand relators are the legal heirs of My Soul Tiebault.

Sec. 16 Art. 6 of the Constitution of Nebraska provides:

> "County Courts in the State of Nebraska are courts of record and have original jurisdiction in matters of adoption."

Sec. 800 of the Statutes of Nebraska for 1895, provides:

> "All decrees (Adoption decrees) entered in such cases in conformity with the provisions and requirements of this chapter shall be *conclusive* upon

all the persons interested in such proceedings or matter."

In Ferguson v. Herr, 64 Neb. 662, the Supreme Court of the state held:

"Adoption proceedings under the state statute are judicial."

In Jones v. Leeds, 82 N. E. (Ind.) 536, it was held:

"A circuit Court having had jurisdiction to render judgment in an adoption proceedings, such judgment is not subject to a collateral attack.* * * The validity of the proceedings was recognized by Louisa W. Leeds during her lifetime and challanged for the first time by her heirs. Appellees cannot be permitted by a court of equity to take advantage of a wrong, if any, to the prejudice and injury of the innocent party after the lapse of many years during all of which time the status of the child, as fixed by the court, had been recognized by all the parties to the proceedings."

Brown v. Brown, 101 Ind. 340, is almost identical in point of fact to the case at bar and is recognized as a leading case on the legal effect of a decree of adoption. In that case the natural heirs of the adoptive father, ten years after the decree of adoption had been entered, and after his decease, brought an action in equity to set aside the adoption proceedings, and sought to claim the property of the adoptive father as against the adopted child, upon the ground that at the time of the adoption, the said father was of unsound mind, and that therefore the decree of adoption was void. It was also further claimed that the adopted child knew at the time of the adoption that the said father was of unsound mind and that in giving his consent and permitting said adoption to be made, with such knowledge, he was guilty of fraud such as would make the order of adoption invalid. In said case the court held:

"A complaint seeking to have an order of court, granting the prayer of a petition for the adoption of a child, and containing the averment, 'that at the time of said adoption said defendant (the adopted child) was eighteen years of age, and knew that Preston Brown (the adoptive father) was a person of unsound mind and that so knowing, and for the purpose of becoming the heir of said Preston Brown, and securing the property of said Brown, he gave his consent to said adoption and permitted said adoption to be made,' does not show fraud as will vitiate the order of the court.

"A judgment of a court of competent jurisdiction, ordering the adoption of a child, fixes its status, is conclusive, and cannot be collaterally attacked.

"Where natural heirs seek to set aside an order for the adoption of a child, their remedy is in equity; they must proceed promptly, and a delay of ten years will be fatal to their suit.

"The judgment of the court fixes the legal status both of the adoptive parent and the child. Paul v. Davis, 100 Ind. 422; Humphreys v. Davis, 100 Ind. 274. A judgment of a court fixing the status of a person, rendered in a matter where it has jurisdiction and upon the notice required by law, is conclusive as against all collateral attacks by parties or their privies."

At page 343 of the opinion the court says:

"Equity requires diligence from suitors. This rule operates in this instance to bar the successful prosecution of this suit. The unexplained delay of more than ten years prevents the maintenance of such a suit as this. It would be unjust and unwise to permit a child to discharge the duties of that relation to an adoptive parent for that period of time and then permit brother and sisters of the adoptive father to come in and take from the child all his rights as heir. If parties desire to con-

test the mental capacity of a kinsman to adopt a child, they must proceed with diligence, and not delay until witnesses have died, have moved away or forgotten the matter. It would open the way to the most flagrant abuses to permit a judgment fixing the status of a child to be vacated after such a long lapse of time and it would also encourage what equity abhors, sloth and negligence."

In Wolf's Appeal, (Pa.) 13 Atl. 760, the court held:

"That the administrators and heirs of the adopting parent could not be heard to question the decree made at his instance."

In further support of our contention, we cite Cizek v. Cizek, 96 N. W. (Neb.) 657, wherein it was held:

"Where the court had jurisdiction of the parties and of the subject matter, and such subject matter was brought before it by the pleadings, its decree is not open to collateral attack, although the jurisdiction may have been exercised and the subject matter dealt with erroneously or irregularly."

The Secretary of the Interior has no authority even to inquire into allegations of fraud or irregularities, if any, in obtaining the decree of adoption, such claims cannot be considered in a collateral attack upon the decree.

In Chaloner v. Sherman, 215 Fed. 867, it was held:

"Where a person who had been adjudged insane in proceedings in a state court brought suit against his committee to recover damages, the plaintiff's present mental condition could not become an issue in the case unless the trial court was justified in setting aside the order adjudging plaintiff insane on collateral attack, and thereupon defendant had introduced some evidence of present incompetency as an affirmative defense."

"In a suit by an insane person against his committee to recover damages, evidence as to plaintiff's mental condition at the time the committee was appointed was inadmissible."

"Where in an action by an insane person against his committee for damages, it appeared that defendant was appointed as successor to a committee appointed in a de lunatico proceedings had in 1899, evidence that plaintiff was lured into the state in 1897, that he might be there adjudged insane was immaterial."

"Where proceedings were instituted against plaintiff in 1899, for the appointment of a committee on the ground that he was insane and a committee was duly appointed, whether he was at that time a resident of Virginia or New York was a question to be determined in that proceeding, and having been determined the judgment on such issue could not be collaterally attacked."

"Where a person who had been adjudged insane has recovered, such fact must be brought to the attention of, and application for relief made to, the court of original jurisdiction."

"In a suit by a person who had been adjudged insane against his committee to recover damages, evidence that the determination of the proceeding to appoint the committee was based on perjurious testimony was inadmissible."

In the opinion at page 872, the court says:

"The trial court was also correct in excluding testimony offered to show that the testimony in the 1899 proceeding was perjurious.

"The question whether the alleged perjurious testimony was true, was necessarily adjudged by the New York court in finding the plaintiff incompetent. This court cannot determine whether or not the testimony in question was perjured without trying over again the very same issue which the New York court decided when it made the decretal

order complained of. It is well settled that the fact that a judgment is procured by false testimony does not open it to collateral attack. United States v. Throckmorton, 98 U. S. 61, 25 L. Ed. 93; Freeman on Judgments (4th Ed.) Sec. 334."

Counsel for plaintiff in error in their brief in the court below (pp. 17-18, 21), contend and will doubtless argue here that "it is absurd to urge that the Secretary proposes to review, vacate, annul or modify a decree of a court not vitiated by fraud nor any want of jurisdiction in rendering court being made to appear. It is conceivable that he might ignore it. For instance, if it should develop that the decree was induced by fraud going to the court's jurisdiction—fraud affecting the jurisdiction in distinction from fraud affecting the cause of action, the merits of the case—no one can pretend that in such event the decree would be binding upon the Secretary, upon an extra-territorial court, or, for that matter, upon any court in Nebraska."

Upon this proposition we submit that neither in the motion for rehearing filed by Harrison Tebo or in the Secretary's return to the order to show cause why a writ of mandamus should not issue herein, is it alleged or claimed there was any fraud affecting the jurisdiction of the County Court of Thurston County, Nebraska, over the adoption proceedings. On the contrary, the said return shows that the only claim made was "that the alleged decree of adoption was void on the ground that it was *secured* by fraud."

The relators therefore contend that the return is insufficient because the jurisdiction of the said county court which granted the decree of adoption conclusively appears and the facts upon which it is based are admitted. The said adoption decree not being the subject of collateral attack and the Secretary being without

power to annul it, the motion for rehearing and to vacate the department decision of January 11, 1913, presented no issue which the present secretary, plaintiff in error, had authority to determine under the Act of June 25, 1910.

IV.

Harrison Tebo and every other blood relative of My Soul Tiebault, deceased, are estopped in law to question the validity of the adoption decree entered by the County Court of Thurston County, Nebraska. Said decree was binding upon My Soul Tiebault during his lifetime and is not subject to collateral attack by his heirs after his death.

It will not be contended that My Soul Tiebault could question the validity of the decree during his life time except in a direct proceeding. It is fundamental that after obtaining such a decree he could not attack it collatterally during his lifetime. Since the decee bound My Soul Tiebault and the relators, it follows that it would be binding upon all persons claiming under or through either of them. Harrison Tebo and the other claimants to the estate of My Soul Tiebault could have no greater right to question the validity of the adoption decree after My Soul Tiebault died than My Soul Tiebault himself had while he was alive. As a matter of law they could only claim, if at all, through him, standing in his shoes and in his stead. If My Soul Tiebault was estopped in law to question, except by direct attack, the validity of said adoption decree then these claimants claiming through him must be estopped. They could not do what he could not do; they could enjoy no right which he did not have. The doctrine is well settled in this country that an adoptive father is estopped to deny the integrity of the adoption decree and that any heirs claiming under him after his death are likewise estopped.

In re Williams, 102 Calif. 70, 41 Am. St. Rep. 163, is a leading case on the subject. The Supreme Court in that case held:

> "The person adopting a minor child and procuring the order for such adoption, and all others claiming as his heirs, are estopped from denying that he was a resident of the county as alleged in his petition for such adoption. * * * *If an adoptive parent voluntarily enters into a contract of adoption and receives in his lifetime the benefits from the relationship thus created, his heirs, after his death, will not be permitted to defeat the rights of the minor child growing out of that contract."

In Van Matre v. Sankey, 148 Ill. 536; 39 Am. St. Rep. 196, it was held:

> "Neither an adoptive parent nor his heirs or representatives, after his death can question the validity of the order of adoption of a minor child procured at his instance and with his consent."

In re Johnson, 98 Calif. 543, Chief Justice Beatty held:

> "It does not lie in the mouth of a stranger or of one claiming through an adult and the consenting party to the adoption proceedings to say that because the interest of the passive and helpless subject of it were not so carefully looked after as they should have been she must therefore be deprived of the advantage of the order of adoption to which she had always conformed, and the protection of which she invokes."

In Parsons v. Parsons, 101 Wis. 76, 1 Ruling Case Law 624, it was held:

> "On the filing of a petition as required by law, in proceedings for the adoption of a child, the county judge acquires jurisdiction to determine all ques-

tions requisite to a valid judgment of adoption, and a determination wrong, or on insufficient evidence, or illegal evidence, or without any evidence, will not affect the jurisdiction to render such judgment.

"The statute on the subject of the adoption of children should be liberally construed in favor of children. Parties who institute adoption proceedings and submit to them as valid for a considerable length of time are estopped by their conduct from changing their position to the prejudice of the child."

The Supreme Court of Nebraska, the home of all the parties interested in the estate involved herein, has interpreted the statute under which the adoption proceedings were had. The rule may be found in Ferguson v. Herr, 64 Neb. 660, and is briefly stated in the syllabus of the case in the following language:

"The decree rendered by the probate court under the provisions of that statutes, fixes the status of the child and its adoptive parents; and when such decree, by failure to prosecute error therefrom, is allowed to become final, it will, if in substantial conformity with the provisions and requirements of the statute, be conclusive upon all persons interested in the proceedings."

Under the uniform and established practice of the courts of each state, outside of Nebraska, and even the Supreme Court of the United States, each and all are bound to follow the rule of interpretation and application made by the Nebraska court of a Nebraska statute. If all the courts of the country are bound to follow the rule of the Nebraska Supreme Court who will suggest that the administrative branch of the government is not likewise bound? It cannot be true that an administrative officer of the Federal Government is above and beyond the rule as announced and followed in every jurisdiction of every court of justice in the country.

In the Ferguson case, supra, the learned justice in the opinion of the court discussed different methods of adopting children in the various jurisdictions and makes it clear that in many of the states the proceeding is ex parte and in no sense judicial but in several states, including Nebraska, the method provided for the adoption of a minor child is judicial in character and an appeal lies from the decree but it cannot be collaterally attacked. On this branch of the question the court says:

> "The parties appear before the court,—those having the custody of the child itself, and those desiring to adopt it. Statements of the parties giving over and taking the child are required, setting forth certain facts. Notice of the hearing by publication is provided for. A hearing is clearly contemplated, and after hearing, the statute provides for the rendition of a decree by the court. Nothing, it would seem, could be more clearly and manifestly judicial. The distinction between adoption under such a procedure as that indicated, and adoption by deed would seem to be sufficiently obvious. In the one case the parties appear, notice to all interested is given, a hearing is had, and the court pronounces judgment. In the other, the parties adopting make a statement, it is attested, acknowledged and recorded, and the act of adoption is eo instanti complete. We think that proceedings under statutes similar to ours are always regarded as judicial. Brown v. Brown, 101 Ind. 340. And if this proceeding was judicial, it cannot of course collaterally be impeached for any error, however gross, that may have intervened between the acquirement by the probate court of jurisdiction of parties and subject matter, and the rendition of the decree. This, it will be conceded, is elementary, and citation of authorities is unnecessary, unless perhaps, it may be successfully urged that no appeal lay from the decree of the probate court, in which event, it may be suggested an erroneous decree ought not to be binding. Sec. 580, chapter 1, title 16 Re-

vised Statutes, 1866, p. 496, entitled 'Error in Civil Cases,' provides as follows: 'A judgment rendered or final order made by a probate court, * * * * or any other tribunal, board or officer, exercising judicial functions, and inferior in jurisdiction to the district court may be reversed, vacated or modified by the district court.' It is not now, and we think, never has been, the policy of the law to deny to any party the right to review. That right is guaranted by the constitution. The section from the statute in force in 1870, just quoted, is clearly broad enough to include the decree of adoption by the probate court. It is an order or decree of an officer inferior to the district court, and exercising judicial functions. It provides for reversal, vacation or modification of such order or judgment and was amply sufficient to enable any one dissatisfied with the decree as entered, and who had an appealable interest, to have obtained a review thereof."

The doctrine laid down in the Ferguson case harmonizes with a sound public policy. And yet, if the respondent in the case at bar is permitted to review the decision of his predecessor and in that review is permitted to determine the validity of the adoption decree he will be doing that which the Supreme Court of Nebraska in the Ferguson case, said could not be done.

If the adoption decree was invalid for any purpose it could have been reviewed in a direct appeal to the higher court, OR, it may be it could have been reviewed within a reasonable time after its rendition by a direct proceeding in equity to set it aside. But neither of these proceedings was ever invoked by any of the interested parties and for a generation the decree remained in force and unassailed. Under the authorities quoted it has become final and no authorities in existence sustain the right to attack it collaterally.

V.

The petition of the relators to the Secretary of the Interior under the provisions of the Act of May 8, 1906, (34 Stat. 182), to issue to them patents in fee simple presented but one question within the jurisdiction of the Secretary to decide, namely, whether said applicants were capable of managing their own affairs and were hence entitled to such patents. Said petition did not, and could not, raise any issue as to their heirship.

Under the provisions of the Act of May 8, 1906, (34 Stat. 182), the Secretary of the Interior is authorized in his discretion whenever he is satisfied that the Indian allottee is competent and capable of managing his affairs, at any time prior to the expiration of the 25 year trust period, to cause to be issued to said allottee a patent in fee simple. Similar provisions are contained in the first section of the Act of June 25, 1910, (36 Stat. 855), giving to the Secretary like powers after he shall have determined the identity of the heirs of a deceased allottee, to issue patents to the heir should he decide him to be competent.

It is true as stated in the Secretary's return that the relators sought to take advantage of this provision and in September, 1913, petitioned the Secretary to issue to them patent in fee simple for the land allotted to My Soul Tiebault; notice as required by the regulations was duly posted at the Winnebago agency, setting forth that application for fee simple patents had been filed and stating that unless cause was shown why the prayers of the petition should not be granted, the Commissoner of Indian Affairs after 30 days from the date thereof, would consider the application with a view to recommending to the Secretary of the Interior that patents issue as prayed. The said petitions were pending before the department at the time Harrison Tebo filed a motion and application for rehearing and to va-

cate the departmental order of January 11, 1913, awarding heirship to the relators. These relators contend as was well stated by Mr. Justice Robb, in his opinion herein in the court below (Record, p. 24), that these petitions for patent raised no issue as to their heirship. The petitions were in fact filed months after the Secretary had determined by his order January 11, 1913, that relators were the sole heirs of the said My Soul Tiebault, deceased, and entitled as such to inherit his allotments. The plain provisions of the two Acts referred to preclude any other conclusion.

The petition filed by the relators for a writ of mandamus against plaintiff in error herein does not ask that patents issue to them, and they only seek to compel the present Secretary to recognize and enforce their rights to the rents, issues and profits of said land, or to the beneficial use thereof, as the law provides.

Section 4 of the Act of June 25, 1910, provides for the leasing of the allotments and "the proceeds of any such lease *shall be* paid to the allottee or his heirs or expended for his or their benefit, in the discretion of the Secretary of the Interior." These provisions of said Act are mandatory. The duty of the Secretary thereunder is clear and these relators are entitled beyond question to the beneficial use and enjoyment of the rents and proceeds derived from their said lands.

CONCLUSION.

Since it is apparent that the Honorable Secretary of the Interior, plaintiff in error, is about to review the decision of his predecessor on the sole ground that he has a right to inquire into the validity of the adoption decree, it is clear under all the authorities that his return fails to state any defense to the petition of relators. The demurrer should have been sustained and the writ allowed by the court.

Respectfully submitted,

NORRIS BROWN,
IRVING F. BAXTER,
HOWARD SAXTON,
EDWARD F. COLLADAY,

Attorneys for Relators, Defendants in Error.

16

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Number 449

IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1915.

FRANKLIN K. LANE, SECRETARY OF THE INTERIOR,
PLAINTIFF IN ERROR,

VS.

THE UNITED STATES OF AMERICA EX RELATIONE JULIA LAMERE MICKADIET, NEE TIEBAULT, AND ALMA LAMERE TIEBAULT.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF OF CHARLES J. KAPPLER AND HARRY L. KEEFE, APPEARING AMICI CURIÆ.

WEKESSER, The Brief Man, Lincoln, Nebraska.

TABLE OF CONTENTS.

SUBJECT INDEX.

Page

STATEMENT OF THE CASE 2

ARGUMENT:

I. Sole jurisdiction to determine title and descent of Indian trust allotments is vested in the Secretary of the Interior 4

II. Due to misapprehension of the law, the Secretary of the Interior never passed on the objections to the Court's jurisdiction in the adoption proceedings 6

III. The Tiebault heirs are not chargeable with laches as they acted immediately on notification of the adverse finding 11

IV. The Court of Appeals erred in assuming the adoption proceedings to be valid and that the Secretary acted capriciously 12

V. Conclusion 18

EXHIBITS IN BRIEF:

Exhibit 1. Copy of letter and report of Commissioner of Indian Affairs, dated Dec. 14, 1912, addressed to Secretary of Interior. Approval of this report by Assistant Secretary of Interior, dated Jan. 11, 1913..... i

Exhibit 2. Copy of petition for rehearing in estate of My Soul Tiebault, together with affidavits of the natural heirs in support of same..... v

Exhibit 3. Copy of Order of Commissioner of Indian Affairs resubmitting case of My Soul Tiebault for rehearing, dated May 5, 1914..... xi

Exhibit 4. Copy of Affidavit of Harrison Tiebault in support of petition for rehearing..... xx

Exhibit 5. Copy of Transcript of portions of evidence taken before a Special Examiner of Department of Interior xxi

Exhibit 6. Copy of portion of Winnebago Agency Annuity Rolls xxx

Exhibit 7. Copy of opinion and decision in Grace Cox inheritance case in Department of Interior... xxxiv

EXHIBITS ON FILE IN THE SUPREME COURT OF THE UNITED STATES.

Exhibit A—Containing certified copies of the following:

1. Letter and Report of Commissioner of Indian Affairs addressed to the Secretary of the Interior, dated December 14, 1912.
2. Approval of Commissioner's letter and report by Assistant Secretary of the Interior, dated January 11, 1913.
3. Unsigned letter of Commissioner of Indian Affairs addressed to Secretary of the Interior recommending that adoption decree be not approved.
4. Memorandum of Chief of Land Division for Signing Officers in the heirship case of My Soul Tiebault, dated November 18, 1912.
5. Unsigned letter of Commissioner of Indian Affairs addressed to Secretary of the Interior setting forth the issues of fact and law in the Tiebault case, and asking for instructions together with order of Assistant Secretary for rehearing.
6. Finding of Special Examiner G. M. Tunison on estate of My Soul Tiebault and Clara Tiebault, dated April 10, 1912.
7. Letter of Commissioner of Indian Affairs addressed to Assistant Secretary of the Interior, dated May 15, 1914, granting a rehearing in the inheritance case of My Soul Tiebault, together with approval by Assistant Secretary of the Interior, dated June 6, 1914.
8. Resume of Authorities.

Exhibit B—Transcript of portions of testimony taken before a Special Examiner of the Department of the Interior and portions of testimony considered by Secretary of the Interior upon stipulation in estate of My Soul Tiebault.

Exhibit C—Certified copy of the affidavit of Harrison Tiebault and portions of the Winnebago Indian Annuity Rolls.

Exhibit D—Certified copy of petition for rehearing in estate of My Soul Tiebault and affidavits of six of the natural heirs in support of petition.

Exhibit E—Decision and opinion of the Department of the Interior in the estate of Grace Cox.

Exhibit F--Lameres applications for patent in fee, and 30-day official Notice thereof published by Superintendent.

TABLE OF CASES.

	Page
Bigelow v. Old Dominion Co., 225 U. S. 110, 134, 139	10
Cooper v. Newell, 173 U. S. 555	10
D'Arcy v. Ketchum, 11 How. 165	10
Hallowell v. Commons, No. 135, October, 1915, Term U. S. S. C.	5
McKay v. Kalyton, 204 U. S. 458	5
Michaels v. Post, 88 U. S. 398	10
Public Works v. Columbia College, 17 Wall. 521, 527	10
Scott v. McNeal, 154 U. S. 34	10
Sheldon v. Newton, 3 Ohio St. 494	10
Thompson v. Whitman, 85 U. S. 457	10
Tiger v. Western Investment Co., 221 U. S. 298, 311	5
United States v. Celestine, 215 U. S. 278	5
United States v. Kagama, 118 U. S. 375	4
United States v. Rickert, 188 U. S. 432	5

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While the sole issue in this case involves the legal authority of the Secretary of the Interior as a judicial tribunal to rehear, modify and reverse his former findings of fact and correct errors of law while the United States holds the legal title in

trust for the Indian, still a consideration of the primary facts in the case are indispensable to a true determination of the issues before this court.

STATEMENT OF FACTS.

My Soul Tiebault was a Winnebago Indian, possessed of an allotment of land in Nebraska, the title to which is held in trust by the United States under the Act of Congress of February 8, 1887 (24 Stat. L. 388), which trust period has not yet expired. He was an incompetent drunkard, unable to speak, read or understand the English language. He died February 10, 1906, at the age of 80 years, unmarried and without descendents, leaving, as his natural heirs, nephews and nieces, known herein as the Tiebault heirs. For many years before his death he had no family and lived in a log house on his allotment with various relatives and friends.

Joseph Lamere is an educated, mixed-blood Winnebago Indian, who has a family, including two daughters, Julia and Alma. He and his family lived for a short time in the home of My Soul Tiebault and cared for the old man, and, for a number of years, rented and subleased his land and collected his rents for him. Lamere admits giving the old man liquor on different occasions.

Ten years before the death of My Soul Tiebault, Lamere took him before the county judge of Thurston county, Nebraska, where he filed a petition asking to adopt the two Lamere girls, who were then one year and thirteen years of age. My Soul Tiebault was 70. Joseph Lamere and Oliver Lamere, his nephew, did the interpreting. It was understood that the only purpose or object of this proceeding was that the Lamere children might inherit the property of My Soul Tiebault. A decree of questionable validity was rendered by the county court, by which My Soul Tiebault formally adopted the two Lamere girls, Julia and Alma.

These girls never lived with My Soul Tiebault after the adoption proceedings, but continued to live with an under the control of their father, Joseph Lamere, who sent them to

school, rented and controlled their alloted land, collected and receipted for their annuity moneys, and exercised every parental function over them, disregarding their formal adoption by My Soul Tiebault. The girls never assumed the name of Tiebault until a valuable inheritance attached to that name after the old man's death. They were carried on the Government rolls under the name and family of their father, Joseph Lamere. No knowledge of the adoption came to these natural heirs of My Soul Tiebault, or to the United States Government, which held the land of this incompetent Indian under guardianship and in trust. After the alleged adoption proceedings the old man did not understand that he had adopted the girls, but said that he had signed some papers giving his land to these girls and was not satisfied with what he had done and wished to withdraw from it. After his death proceedings were instituted in the federal court between the Lameres and Tiebaults to adjudicate the title to this land, but before a decision was rendered the jurisdiction was divested by Act of Congress, and by stipulation the record made was transferred by transcript to an examiner of inheritance under the Secretary of the Interior and a large volume of evidence was taken.

Upon the consideration of this evidence the Commissioner of Indian Affairs submitted the matter to the Secretary of the Interior under a letter of December 14, 1912, a copy of which is printed herein, marked Exhibit "1" (see also Exhibit "A" filed in this court, pp. 1-6, inclusive).

In this letter the main question raised is whether the Secretary of the Interior *can* ignore the decree of adoption and determine the natural heirs to the exclusion of the adopted children. The letter then resolves the question in the negative and recognizes the decree of adoption as a matter of law and as valid and binding without passing upon its jurisdiction. This report was approved by the Secretary of the Interior January 11, 1913 (see Exhibit "1," brief; Exhibit "A," files).

The natural heirs had no actual notice or knowledge of this decision and finding until June, 1913, and in August, 1913,

they protested at the Indian Office on their reservation, and filed a request and motion for a rehearing, and on December 3, 1913, these heirs filed another petition before the Secretary of the Interior for a rehearing, with six affidavits attached, setting forth newly discovered evidence and other valid grounds for rehearing (see Exhibit "2," brief; Exhibit "D," files). Upon this petition issue was joined on the question of rehearing, and many briefs were filed with the Secretary of the Interior. On May 15, 1914, the Commissioner of Indian Affairs rendered a decree and opinion and order opening the Tiebault inheritance case for review and rehearing on all questions of law or fact. This order was approved by the Secretary of the Interior June 6, 1914, a copy of which is printed here named Exhibit "3" (see also Exhibit "A," pp. 70-85, inclusive).

After this decision was rendered the Lameres refused to proceed with a rehearing and instituted these proceedings in the supreme court of the District of Columbia for a writ of mandamus to prevent the Secretary of the Interior from granting such a rehearing, and the subsequent proceedings have been had in accordance with the printed record filed herein.

ARGUMENTS AND CONTENTIONS OF THE NATURAL HEIRS OF MY SOUL TIEBAULT.

I. The sole and exclusive jurisdiction to determine the equitable title and descent of Indian allotments, while held under trust by the United States under the Act of Congress of February 8, 1887, and similar Acts, is vested in the Secretary of the Interior, except where specially divested by Act of Congress.

The determination of this proposition involves a consideration of the relations of this Government toward the Indians.

The primitive dependence and the economic helplessness of these people under modern civilization have been recognized by the courts, and it has been observed that the obligation of the Government towards them falls upon the executive, and out of this obligation arises the duty of protection.

United States v. *Kagama*, 118 U. S. 375.

The legal interpretation of this allotting statute has been made clear by this court, and in the construction of the trust created thereby, it has been held that the holding of the individual allotment in trust by the United States, for the sole use and benefit of the Indian ward, was merely one of the instrumentalities employed by the Government in its policy of protecting and developing these people in their passage from a state of dependence and pupilage into fuller citizenship, and preparing them to assume the responsibilities of civilized life.

United States v. *Rickert*, 188 U. S. 432.
Tiger v. *Western Investment Company*, 221 U. S. 298, 311.
United States v. *Celestine*, 215 U. S. 278.

Prior to the Act of Congress of August 15, 1894 (24 Stat. L. 286), the Secretary of the Interior, as the representative of the Government in the execution of treaty obligations, was vested with exclusive jurisdiction to determine the descent of these lands during the trust period.

McKay v. *Kalyton*, 204 U. S. 458.

This jurisdiction was temporarily interrupted by the passage of the Act of 1894, but it has been held that the Act of June 25, 1910 (36 Stat. L. 855), restored to the Secretary of the Interior the authority which inherently belonged to his office.

Hallowell v. *Commons*, (No. 135, October, 1915, term, U. S. Supreme Court).
Tiger v. *Western Investment Company*, 221 U. S. 311.

From these authorities the conclusion irresistibly arises that the Secretary of the Interior has inherently, and by congressional authority, the sole and exclusive jurisdiction to determine the heirs of a deceased allottee of Indian land held in trust by the United States, and to do and perform every ministerial and judicial function and act necessary in the execution of the trust imposed upon the Government in the administration of Indian affairs.

II. When the Secretary of the Interior passed upon the estate of My Soul Tiebault, he proceeded upon the theory that he was not possessed of the judicial authority to question the jurisdiction or validity of a decree of court. The objections to the jurisdiction in the adoption proceedings in this case have never been considered or passed upon.

In his report of December 14, 1912, to the Secretary of the Interior the Commissioner of Indian Affairs says:

> "The main question, however, appears to be whether the Secretary of the Interior can ignore the decree and determine the natural heirs to the exclusion of the adopted children." (Exhibit "1," of this brief; Exhibit "A" files, pp. 1 to 7).

Then proceeding with the report he assumes that the provisions for adoption are binding on the Secretary and that the Secretary is powerless to question the jurisdiction of adoption proceedings leading up to a decree affecting the descent of these trust lands (Exhibit "1," this brief).

It is very evident from the record in this case that considerable conflict of opinion existed in the Indian Office regarding the authority of the Secretary to question a decree of a court for jurisdictional defects. This question appears, from the record, to be uppermost in the consideration of the case.

The acting chief of the land division filed an opinion in this case, which appears in the record, in which he observes:

> "The evidence in the case tends to show *strongly* that Tiebault did not fully understand the effects of his acts in court. He was there surrounded entirely by Lamere and his friends, (including the interpreter, a kinsman of Lamere)—an ignorant, fullblood Indian who could not speak or understand the English language—an habitual drunkard, seventy years of age, and attempting to take into his care a 13 year old girl and an infant child one year old: It was shown to the court that he possessed an income of $10 per month. The court found Tiebault to be a suitable person to care for, support and educate these children. But it will be noticed in his evidence Judge Curry observed that 'the *only* object was that the children might inherit that property.' That this is true in regard

to the Lameres is too clearly shown by the evidence. These children never lived with Tiebault at any time as his adopted children. Tiebault himself stayed one year in Lamere's house. The remaining nine years were spent with other people, nearer relatives. Not a dollar of the annuity money paid the adopted children ever entered Tiebault's hands. He had nothing to do with sending them to school. The evidence shows that he did give them $4 or $5 voluntarily but there is reason for doubt that the $20 draft was freely sent because he considered them his children, and that it was his duty to do so. It appears from a reading of the whole case that the Lameres never intimated or desired that anything but a *mere form* of adoption should take place. And that clearly seems to have been the opinion of the presiding judge. Even if there were no direct evidence bearing on this point, it might safely be inferred from the natural instincts of parentage as being repugnant to the actual fact of turning female children of tender years over to the care of an habitual drunkard disqualified from every point of view as a proper guardian." (Exhibit "A" Files, pp. 17, 18 and 19.)

A letter was prepared by the Indian Office and filed to be submitted, but was not approved, in which the facts were briefly related and the issues stated, and in conclusion the whole question is submitted to the Secretary's office for an opinion in the following terms:

"The questions of law appear to be very closely drawn. The record is voluminous and it is practically impossible for me personally to go into the evidence and a consideration of the law with sufficient scrutiny to warrant me in adopting the view taken in this office, or to reject the conclusions reached as inconsistent with the law and the facts. Because of the importance of the case and the necessity in any event of a careful review of all the evidence and the questions of fact and law in the Department, as touched upon in the briefs of the attorneys, I respectfully submit the record, together with the report of the special examiner and the letter and memorandum prepared in this office, for such decision and instructions as may be deemed proper." (Exhibit "A" Files, pp. 11 and 12.)

An opinion was prepared by the Indian Office and filed, but not approved, in which the issues relative to the adoption proceedings were set forth as follows:

> "The defendants question the legality of the proceedings under these laws and attack the validity of the decree, alleging irregularities in the proceedings, and fraud in the agreement on which those proceedings were based. The issues as offered by counsel for the nieces and nephews, defendants in this cause, and argued in their brief, are in effect as follows:
>
> "(1) That the purported decree of adoption was secured through fraud and deceit practiced upon My Soul Tiebault and upon the respondents and hence is void;
>
> "(2) That the hearing on the alleged adoption proceedings was held by the county judge of Thurston county in his private office and not in the office of the county court in the court house building and hence said proceedings are void;
>
> "(3) That the alleged adoption proceedings are void for want of compliance with several of the jurisdictional requirements of the Nebraska statute;
>
> "(4) That the Secretary of the Interior had no notice of the alleged adoption proceedings and has not consented to or approved same and hence same are void so far as they relate to the restricted lands of which My Soul Tiebault died seized;
>
> "(5) That by the alleged adoption proceedings it was attempted to accomplish indirectly what could not be accomplished directly, viz., change the descent of the lands whereof My Soul Tiebault was seized at the time of his death, and thus evade the provisions of the Allotment Act of February 8th, 1887.
>
> "Attorneys for complainants, after submitting testimony to prove what took place in court, rest their cause upon a provision in section 5 of the Act of February 8, 1887 (24 Stat. L., 388), and assert that the adoption proceedings were in substantial accord with the procedure set out in the laws of Nebraska covering the adoption of children; that the decree cannot be attacked in any collateral proceedings, and that there being no material

irregularities, the children of Joseph Lamere by such decree became the daughters of My Soul Tiebault, entitled to all the benefits and privileges that would have belonged to children of the adoptive parent, born to him in lawful wedlock. The provision referred to from section 5 of the Act follows:

" 'That the law of descent and partition in force in the state or territory where such lands are situate shall apply thereto after patents therefor have been executed and delivered, except as herein otherwise provided; * * *'

"There is much testimony covering what took place in connection with these proceedings; also concerning the mental qualifications of Tiebault, his excessive addiction to intoxicants, his own subsequent doubt regarding the papers he had signed, his gifts to the children, his declarations to some that he had made them his own children, and his declarations to others indicating that he did not remember signing any papers and that if he had signed any he wanted to 'break' them.

"Whether such testimony is relevant and can affect the final determination hinges on a determination on the contention that the adoption decree constitutes a *'res adjudicata'* and cannot be collaterally attacked and on the further issues as to

"1. Whether the jurisdiction of the state courts over citizen Indians extends to any right, interest or title of any Indian in lands or moneys held in trust by the United States for such Indian or Indians;

"2. Whether the state or county courts in the exercise of their jurisdiction over Indians as citizens of the state, have now, or ever had, such jurisdiction as will bind the Department by any of its decrees so as to affect the title or descent of lands or moneys held by the United States in trust for Indians." (See Exhibit "A," Files, pp. 27, 28 and 29.)

It will be observed from these statements coming from the office of the Commissioner of Indian Affairs that the real issue before the Secretary in this case involved the jurisdictional validity of the adoption proceedings, and the first vital question was whether the Secretary could question such proceed-

ings and the decree resulting therefrom, and, upon such consideration, pass upon the jurisdictional defects therein.

From the authorities above cited it is settled that in these matters the Secretary is a tribunal with a wide, far-reaching jurisdiction, coupled with the administrative function of protecting a dependent people in the enjoyment of rich holdings while surrounded by progressive American people who sometimes covet their neighbors' goods. In the exercise of this judicial and administrative function the Secretary is a Court and more than a Court.

It must be admitted as a settled principle of law that if a court proceeds without jurisdiction its decrees are void, regardless of how technically correct the record may appear.

Sheldon v. *Newton*, 3 Ohio St. 494.
Scott v. *McNeal*, 154 U. S. 34.
Cooper v. *Newell*, 173 U. S. 555.

It must also be admitted as a settled principle of law that a court of general or superior jurisdiction may, even in a collateral proceedings, question the decree of another court when it appears that such decree was rendered without jurisdiction because of fraud, deceit or other jurisdictional defects, notwithstanding the averments contained in the record of the judgment itself.

> "* * * whenever a judgment or decree is procured through the fraud of either of the parties, or by the collusion of both, for the purpose of defrauding some third person, such third person may escape from the injury thus attempted by showing, even in a collateral proceeding, the fraud or collusion by which the judgment was obtained."

Michaels v. *Post*, 88 U. S. 398.
Thompson v. *Whitman*, 85 U. S. 457.
D'Arcy v. *Ketchum*, 11 How. 165.
Public Works v. *Columbia College*, 17 Wall. 521, 527.
Bigelow v. *Old Dominion C. Min. & S. Co.*, 225 U. S. 110, 134-139.

The decision which the Secretary of the Interior now proposes to open for reconsideration was rendered under a mis-

apprehension of these well-settled principles of law, and he therefore never exercised his full jurisdictional function. As such a tribunal the Secretary is undoubtedly clothed with the power and authority to rehear and determine what he has not fully passed upon, and if he finds that in the former decision he was not fully advised of the facts, he may ascertain them, and if he finds that in such former decision he has made errors of law or fact, he may correct the same.

III. These Tiebault heirs cannot be charged with laches because within a month from the date when they received notice of an adverse decision they applied for a re-hearing and have ever since pressed that claim persistently.

The affidavit of Harrison Tiebault sets forth his diligence in a protest against the decision in favor of the Lameres. The first notice he received of the decision of January 11, 1913, was in June, 1913, and then as soon as he could consult with the other heirs and determine on a course of protest, he made objections for them about August 1, 1913 (Exhibit "4," brief; Exhibit "C," files).

He went to Washington from Nebraska, and on October 8, 1913, filed a formal motion for the review of this decision (Exhibit "3," brief; Exhibit "A," files, p. 74).

This motion was persistently followed by the appearance of the parties with their attorneys, and in November, 1913, these natural heirs filed another formal, verified petition for rehearing, setting forth five grounds for reconsideration and review, supported by six affidavits (Exhibit "2," brief; Exhibit "D," files).

The allegations of this petition and affidavits have never been denied by the Lameres through any declaration or pleadings filed in the record. We contend most emphatically that upon this showing alone the Secretary was justified in granting a rehearing. In fact, he could not well have done otherwise.

Considering the showing in the record of promptness and diligence in protesting and demanding a rehearing by these Winnebago Indian wards, we contend most seriously that no charge of negligence can be made against them.

IV. The Court of Appeals assumed that the adoption proceedings are admittedly valid and that the Lameres are admittedly the legal heirs of My Soul Tiebault; that no motion for re-hearing was filed before the secretary; that no fraud is claimed in procuring the adoption; and that the Secretary of the Interior arbitrarily and capriciously exceeded his power in opening his former finding for review.

All of these assumptions are emphatically denied, and upon rehearing will be conclusively proved untenable.

It is very evident that the full record of the case as presented to the Secretary was not before the court of appeals, because in its decision a biased and unwarranted statement of the facts appears which must have been drawn from the petition for mandamus presented by the Lameres, because there was nothing else in the record from which to draw such facts. While it may be claimed that these facts are not at issue here, still an inspection of the record discloses that they influenced materially the decision in the court of appeals.

The first vital error in this decision is the assumption that the adoption proceedings are admittedly valid and the Lamere girls are admittedly the legally adopted children by My Soul Tiebault.

This assumption sweeps away the real issue which the natural heirs are seeking to have considered before the Secretary, and which has never been primarily passed upon by him. If this assumption were admitted and true, there would be little to litigate. But let us see if there is anything in the record upon which we are warranted in denying the validity of these adoption proceedings.

Before the county court of Thurston county, Nebraska, in October, 1896, appeared an uneducated Winnebago Indian,

My Soul Tiebault, 70 years old, unable to read, write or speak the English language, presented and surrounded by those who sought to profit by his transactions which they alone could interpret to the court. He was admittedly incompetent, a drunkard, without a home or family, and through Joseph Lamere, the man who gave him whiskey, he filed a petition to adopt his baby, then one year old, and thereby make it the legal heir to his vast and rich estate held in trust for him by the United States Government. He could not convey this estate by deed or will, and the only way it could be filched from him was by means of the subtle cloak of a fraudulent adoption,

The county judge before whom he appeared says that he talked with My Soul Tiebault but very little, and that through an interpreter; that it occurred to him as an unusual proceeding for an old Indian to adopt a baby; and that it was his understanding that the only object of the proceedings was that the Lamere children might inherit his property (see evidence of J. M. Curry, Exhibit "5," brief; Exhibit "B," files).

Oliver Lamere tells of his relationship to the adopted children; that My Soul Tiebault could not write; that he had no family; and that the children were always known as Lamere, and never assumed the name or lived with My Soul Tiebault (see evidence of Oliver Lamere, Exhibit "5," brief; Exhibit "B," files).

Joseph Lamere, the father of these children, admits that he always retained possession of the property of his children even after the adoption proceedings, and that he bought whiskey and gave it to My Soul Tiebault at different times (see evidence of Joseph Lamere, Exhibit "5," brief; Exhibit "B," files).

Clarence Fisher, Martha Payer Fisher, Frank Tebo, James Yellow Bank, and Louis Grayhair establish by their evidence that My Soul Tiebault lived alone and had no family; that the Lamere girls never lived with him; that he was a confirmed drunkard; that he wanted to set aside the adoption proceed-

ings because Joseph Lamere got him drunk when he signed the petition, and he did not know what he was doing.

Thomas L. Sloan says that My Soul Tiebault spoke little English and Joseph Lamere interpreted for him (Exhibit "5," brief; Exhibit "B," files).

The annuity rolls kept by the Government of payments made to the Winnebago tribe of Indians from 1899 to 1907 show that Joseph Lamere kept these girls in his family and collected and receipted for their annuities after the adoption (see annuity rolls, Exhibit "6," brief; Exhibit "C," files).

Now, the Tiebault heirs stand before the Secretary with their verified and undenied petition for rehearing, charging the bribery and subornation of Lamere's witnesses in the former hearing and alleging that they now have material and competent evidence not presented before; and that the Secretary did not fully consider the validity of the adoption proceedings, all of which is supported by affidavits (Exhibit "2," brief; Exhibit "D," files).

In view of this record we feel warranted in asserting that the validity of the adoption proceedings can not be admitted, and has never been fully determined, and is a vital issue in this case which can be heard and considered only by the Secretary of the Interior.

Where is the warrant for the assertion that in opening this case for rehearing the Secretary's act is arbitrary or capricious?

Taking up in detail the opinion of the court of appeals as printed in the record, we find the following assertions which we can not let pass unchallenged:

> "The controversy was laid before the Secretary of the Interior, who, after full investigation and hearing on January 11, 1913, ruled that said adoption decree was valid and regular in all respects." (See transcript of record, p. 22.)

We have shown above that the Secretary of the Interior did not fully pass upon this adoption decree, and find it valid over the objections to jurisdiction.

The court further says:

> "No motion for rehearing was filed, nor was the ruling challenged in any way." (See transcript of record, p. 22.)

We have shown by our exhibits that this is incorrect because the protest that Harrison Tiebault filed was for a rehearing and not against the issuance of patents in fee as suggested in the opinion. The opinion proceeding with a statement of the provisions of the alloting act and jurisdictional act says:

> "His decision upon this question, the act specifically declares, 'is final and conclusive.' But that does not mean that he could arbitrarily ignore the legal heirs of a deceased allottee and decide in favor of a collateral heir or a stranger in blood. Such a decision would be arbitrary or capricious and not sustainable under any view of this act." (See transcript of record, p. 23.)

We have no controversy with this statement, but rather with the assumption that the act of the Secretary in this instance was arbitrary or capricious. As he has never passed upon the jurisdiction and validity of the adoption proceedings, and has newly discovered evidence presented to him, it is certainly not arbitrary or capricious if he were to open the decision to consider the validity of these adoption proceedings and hear the newly discovered evidence.

The court says further:

> "We think, therefore, that this act merely clothed the Secretary with jurisdiction to identify the legal heirs of such decedent, and that in so doing he was as much bound by the laws of descent in the jurisdiction where the lands were located as would be any other tribunal." (See transcript of record, p. 23.)

We believe that by this act the Secretary was clothed with jurisdiction to do more than to "identify the legal heirs" because this court in *Hallowell* v. *Commons, supra,* confirmed this jurisdiction as final and conclusive, and said that the

Secretary had considerable discretion as to details, and while the Secretary in the exercise of this jurisdiction may be bound by the laws of descent in the jurisdiction where the allotment is located, still that question is not presented, because we are not complaining about the laws of descent, but we are objecting to a decree of adoption which we insist was void because of fraud, deceit, undue influence, and irregularity, which we propose to prove if given the opportunity.

Assuming the position of the court of appeals to be true, viz., that the Secretary of the Interior is merely clothed with jurisdiction to identify the legal heirs of a decedent, let us ask these complainants how the Secretary of the Interior could "identify the legal heirs of a decedent" if, when an alleged decree of adoption is presented to him behind which stands jurisdictional defects, fraud and deceit, he is bound to close his eyes to such a worthless decree and assume it as valid and binding? If the laws of descent are binding upon the Secretary, that does not mean that every worthless decree rendered in the name of such laws is necessarily valid and binding upon him.

The court of appeals further says:

> "The sole justification for the attempted reopening of the departmental decision of January 11, 1913, according to the answer to the bill, is that a collateral heir, seventeen years after this decree of adoption * * * seeks to 'show that the alleged decree of adoption was void on the ground that it was secured by fraud.'"

We have answered this question many times, and we only wish to suggest that until the death of My Soul Tiebault, these natural heirs who were defrauded out of their inheritance by these questionable adoption proceedings, never had notice of them, and were never in a position to question the validity thereof.

The court of appeals also assumes that the question raised by these natural heirs was by reason of the petition to the Secretary for fee simple patents. The record clearly disputes this suggestion, and even though it were true, according to

the alloting act, the Government is charged with the responsibility of issuing a patent in fee to the true and lawful heirs of the allottee, and how could this treaty and congressional obligation be discharged if the Secretary of the Interior were not permitted to correct his former errors of law or fact, and issue the patent to the rightful heirs?

The court of appeals also suggests:

> "It is not contended that appellants were guilty of any fraud in procuring their adoption by Tiebault, nor could it well be, since they were infants at the time. This, therefore, is not an attempt by an alleged wrongdoer to profit by his own fraud."

This suggestion in view of the record answers itself in most eloquent terms. True, an ordinary baby, one year old, could not perpetrate any fraud on My Soul Tiebault, but the record points unmistakably to the fact that a fraud was perpetrated in the name of the child by its self-seeking parent. Will the courts permit these appellants, even though they were infants at the time, to profit by the fraud and deceit of their father just because they were incapable of perpetrating the fraud themselves? As we have many times asserted, it is most emphatically contended that fraud was perpetrated in procuring these adoption proceedings.

The Wolf case is cited as an authority in point, but in that case it was not contended that the court did not have jurisdiction, while here the question of jurisdiction is the vital issue.

Referring to the suggestion in the opinion, viz.:

> "If a collateral heir would have no standing to challenge such a decree in a direct proceeding, surely he ought not to be permitted to question it indirectly,"

we wish to call attention to the holding in *Michaels* v. *Post, supra,* where it is held that a decree procured through the fraud of either of the parties may be questioned by a third person affected thereby even in a collateral proceeding. Surely to permit these natural heirs whose interests would be lost if this questionable adoption decree were sustained, to do what the supreme court says they have a right to do, would not

amount to an arbitrary exercise of power on the part of the Secretary.

Therefore, making comparison of the opinion of the court of appeals with the record from the Secretary's office now on file in this court, it is readily seen that the vital questions involved were approached by that court with a misapprehension of the true nature of the cause before the Secretary. As a result, it was erroneously taken for granted that there would be nothing to hear if a rehearing were granted. For these reasons alone this decision should be reversed.

CONCLUSION.

A number of other vital questions relative to the legal status of the title held under allotment, the powers of the Secretary of the Interior, and the obligations of the Government toward the allottee and his heirs, are involved and are merely touched upon in this brief, because we assume that they will be more carefully and ably presented by the Honorable Secretary of the Interior.

But we can not close our consideration of the cause without suggesting that all of the questions involved herein were directly before the Secretary in the *Matter of the Estate of Grace Cox,* deceased Omaha allottee, and were in that decision very exhaustively considered and determined.

This was an adoption case from the same county court, and almost identical to the case at bar as to parties, facts and issues. It was decided by the Secretary about the same time and in the first holding the Secretary found that he was not judicially authorized to question a decree of adoption. Later, upon rehearing, it was held that the Secretary could legally consider the jurisdiction of an adoption proceedings, and if found void, disregard the same. We have filed in this court a certified copy of this opinion and decision, and have printed as an exhibit in this brief (see Exhibit "7," brief; Exhibit "E," files).

A careful consideration of the Grace Cox case is conclusively convincing that the Secretary should have, and by congres-

sional authority does have, the power as a judicial tribunal to rehear and reconsider the former findings of his office in the determination of heirs to an Indian trust allotment during the trust period.

The undersigned respectfully submit the record, authorities, and suggestions above indicated with the earnest conviction that upon the consideration of the cause, the decision from the court of appeals will be reversed, and the petition for mandamus denied and dismissed.

CHARLES J. KAPPLER,
HARRY L. KEEFE,
Attorneys Appearing Amici Curiae.

APPENDIX.

EXHIBIT "1."

1-46327

Land-Sales
36675—1912
J F A

DEPARTMENT OF THE INTERIOR

OFFICE OF INDIAN AFFAIRS

WASHINGTON

Estate of Clara Tiebault and My Soul Tiebault.

Dec. 14, 1912.

The Honorable
The Secretary of the Interior.

Sir:—

I have the honor to submit a report of Special Examiner G. M. Tunison in determination of the heirs of the following named deceased Winnebago Indians in Nebraska, to whom there were issued patents for land allotted to them on the Winnebago Indian Reservation in Nebraska, on the dates and under the laws here indicated:

My son de kaw or My Soul Tiebault.

E½ of NW¼ of Sec 12, T. 28 N., R. 8 E., 6th P. M., containing 80 acres, restricted fee patent issued on October 28, 1872, under the Act of February 21, 1863 (12 Stat. L., 658, 659), in the name of Benjamin Groxvenor, which name appears to have been given arbitrarily when the allotment was made. The name was not used and apparently was rejected by the allottee in 1900 during an investigation of allotment matters by United States Special Allotting Agent John K. Rankin; fee patent relinquished and allotment canceled and trust patent to same tract issued on April 25, 1900, under the provisions of the Act of February 2, 1887 (24 Stat. L., 388).

My son de kaw or My Soul Tiebault, No. 184.

S½ of SW¼ of Sec 2, T. 26 N., R. 6 E., 6th P. M., containing 80 acres; trust patent issued on December 9, 1893, under the Act of February 8, 1887 (24 Stat. L., 388).

He nu kaw—Clara Tiebault, No. 185.

Lot 3, Sec. 2, T. 26 N., R. 6 E. 6th P. M., containing 40.96 acres; trust patent issued on December 9, 1893, under the provisions of the Act of February 8, 1887 (24 Stat. L., 388).

These allotments are estimated as worth $10,000 and upwards. From entries in the Family Register compiled in 1887 to 1889, it appears that the daughter was entitled to share in the estate of her grandmother. That matter does not appear to have been definitely terminated. Such inheritance as came to Clara descended to her father and must follow the course of descent as here determined.

It appears from the testimony in the record that Clara Tiebault, minor daughter of My Soul Tiebault, died in January, 1888, unmarried and without issue. Under the second canon of descent her allotment descended to her father, and at his death it further descended in the same manner as his own allotment.

The record further shows that My Soul Tiebault died on or about February 10, 1906, at the age of about 80 years, unmarried and without issue or descendants, survived by nieces and nephews. Under the fifth canon of descent his estate would have passed to the next of kin, the nieces and nephews above referred to. Such course of descent, however, is disputed by Julia Lamere and Alma Lamere who, under the names of Julia Lamere Tiebault and Alma Lamere Tiebault by her duly appointed guardian, Joseph A. Lamere, as complainants, brought suit in the United States Circuit Court for the District of Nebraska, Omaha Division, in 1908, against the United States of America, Ellen Tiebault, et al., defendants, to remove a cloud on title to the property, claiming as sole heirs thereto by virtue of a decree of adoption issued by Judge J. M. Curry in the Thurston County Court November 4, 1896.

Stipulations for the withdrawal of the suit from the Circuit Court and its continuation before the Secretary of the Interior were filed in that court. (See report of Special Examiner Tunison.)

The Act of 1897, *supra*, provides that the law of descent and partition in force in the State or Territory where the lands are situated shall apply thereto after patents therefor have been executed and delivered.

That Act also provides that "if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same," before the expira-

tion of the trust period, "Such conveyance or contract shall be absolutely null and void."

The regularity of the decree of adoption is questioned by the next of kin who also attack it on the ground of fraud and maintain that it is in the nature of a contract and therefore null and void.

When the United States Court was exercising jurisdiction of the case, the next of kin by demurrer, raised all questions pertaining to irregularities in the adoption proceedings and as to the jurisdiction of the court granting and issuing the decree of adoption, which were argued, passed upon and overruled by the court, which sustained said proceedings as valid and binding upon the parties thereto.

It is believed that the objection to the decree on the ground of its being in the nature of a contract may be dismissed, as it is the *decree* and not the contract which constitutes the adoption.

The main question, however, appears to be whether the Secretary of the Interior can ignore the decree and determine the natural heirs to the exclusion of the adopted children.

The Act of 1887 applies the law of descent and partition of the State of Nebraska to Tiebault's allotment, and the laws of that State govern its descent.

It has never been suggested that the laws in force at the date of allotment govern the descent, but it has been held uniformly that those in force at the date of the allottee's death apply. It is not denied that the State may change its laws of descent and thus divest those who would be heirs under the laws existing at the time of allotment of a part or the whole of an allotment which would otherwise descend to them.

This has actually been done in the State of Nebraska by the abolition of dower which deprives the children of the right to a fee simple title to a part of the land and gives it to the widow.

The laws of Nebraska permit the adoption of children with all the legal rights, privileges, immunities, and heirships, as if they were born in lawful wedlock, which adoption results in depriving next of kin of expected inheritances.

This may be a law of procedure rather than of inheritance, but it certainly has a material effect upon the descent of property.

It is the duty of the Secretary of the Interior to ascertain and determine the heirs of deceased allottees under the laws of descent in force in the State where the land is situated, and any law affecting such descent would seem to be binding on him.

I am of the opinion that the decree of adoption should be recognized as valid and binding and the estate awarded as recommended by the Special Examiner.

In order that you may be fully advised in the premises, your attention is invited to a draft of a letter prepared in this Office which very fully sets forth the arguments in favor of ignoring the decree of the County Court in awarding the estate to the next of kin.

Respectfully,

F. H. ABBOTT,
Acting Commissioner.

12-Lk-13

Jan. 11, 1913.

The proceedings had in determination of the heirs of My Soul Tiebault, deceased Winnebago allottee No. 184, and of Clara Tiebault, deceased Winnebago allottee No. 185, both of Nebraska, and the conclusions of the Special Examiner are hereby approved; and I find that by the adoption proceedings and the decree of the Thurston County Court in 1896, Julia Lamere and Alma Lamere, became the legally adopted children of My Soul Tiebault, thereafter to be known as Julia Lamere Tiebault and Alma Lamere Tiebault, and as such adopted children were entitled to his whole estate, sharing equally therein; that My Soul Tiebault was the sole heir of his deceased daughter Clara Tiebault, and that her allotment being included in his estate, descended from him to his adopted children, Julia Lamere Tiebault and Alma Lamere Tiebault in equal shares.

LEWIS C. LAYLIN,
Assistant Secretary.

WCP TES

EXHIBIT "2."

In the Department of the Interior of the United States of America.

In the Matter of the Estates of MY SOUL TIEBAULT and CLARA TIEBAULT, Both Deceased.	PETITION FOR REHEARING

Comes now the heirs of My Soul Tiebault and Clara Tiebault, both deceased, and respectfully ask the Secretary of the Interior and the Commissioner of Indian Affairs to order a rehearing in each of the above entitled estates for the following reasons:

FIRST: That the proponents of the adoption proceedings in said hearing unduly influenced, suborned, and bribed certain witnesses who testified in behalf of said adoption proceedings upon material facts, and that such evidence was untrue and was influenced by such subordination.

SECOND. That the attorneys for the undersigned heirs were not permitted by reason of a misunderstanding with their attorneys to present the evidence of the following witnesses, towit:

Harry Rave, John Rave, Albert Hensley
C. J. O'Connor, Frank Tebo, and others,

and if said cause were reopened and reheard such witnesses would be presented and furnish the material testimony in behalf of the rights and interests of these heirs.

THIRD. That on or about one year prior to the death of My Soul Tiebault, as we have been informed at the Winnebago Agency, upon his complaint that the adoption proceedings had been procured from him through fraud, a letter was written to the Commissioner of Indian Affairs making inquiry in regard to the effect of these proceedings and a reply was received, as these heirs are informed, from the Honorable Commissioner stating that if the land was not restricted the proceedings would have to be commenced in the local courts; that the matter was not understood at the time, that these proceedings were not presented in the hearing in said estates and will be secured and presented if this matter is reheard; that such correspondence is material to the defense in behalf of these heirs.

FOURTH. That the Honorable Secretary of the Interior, in passing upon the estates of My Soul Tiebault and Clara Tiebault erred in holding that the decree of the County Court was not subject to collateral attack for fraud, undue influence and mistake, and lack of jurisdiction.

FIFTH. That if said cause is reopened and reheard, these heirs will present material evidence which they believe will justify a reversal of the cause; and that this application for reopening and rehearing is not made for delay but to obtain justice.

WHEREFORE the undersigned respectfully ask that this petition be considered and that the attached affidavits be heard in support thereof, and that upon the consideration of this petition the estates of My Soul Tiebault and Clara Tiebault shall be reopened and set for hearing denovo at the Winnebago Agency and that notice hereof be given to the adverse parties as provided by law.

GEORGE TEBO, His (Thumb print) Mark.

JOSEPH TEBO,

JENNIE TEBO, Her (Thumb print) Mark.

HARRISON TEBO,

FRANK TEBO,

ELLEN TEBO, Her (Thumb print) Mark.

Witness to Sigs.:
E. L. FRITZ,
HARRY L. KEEFE,
Witness to all signatures and marks.

STATE OF NEBRASKA } ss.
Thurston County. }

Harrison Tebo, being first duly sworn, deposes and says that he is one of the heirs to the Estates of My Soul Tiebault and Clara Tiebault, both deceased; that he is one of the petitioners

in the above entitled cause; that he has read the above and foregoing petition; and that the facts therein set forth are true as he verily believes.

HARRISON TEBO,

SUBSCRIBED and sworn to before me this 24th day of November, 1913.

E. L. FRITZ,
Notary Public.

[SEAL]

In the Department of the Interior of the United States of America.

In the Matter of the Estate of MY SOUL TIEBAULT, Deceased. } AFFIDAVIT

STATE OF NEBRASKA, Thurston County, SS:

Louis Grayhair and Jane Forecloud, being first duly and severally sworn on oath and according to law, depose and say that they are Winnebago Indians; that they are more than forty years of age respectively; that they do not speak nor understand readily the English Language; that when the evidence was being taken which is now before the Department of the Interior, and upon which the Secretary of the Interior acted in the determination of the My Soul Tiebault et al Estates, these two affiants were called as witnesses and testified; that Joseph LaMere told affiants to swear that My Soul Tiebault came to them and told them that he had signed over his land to Joseph LaMere's daughters, and that if they would so testify he would give these two affiants the sum of $500; that these affiants testified to that effect in substance, and that after so testifying, Joseph LaMere paid their expenses and gave each of them a quart bottle of whiskey, but that he has not yet paid them the $500; and further affiants say that James Thomas and wife were also promised by Joseph LaMere, in the presence of these affiants, $500 to testify to the same state of facts—that is that My Soul Tiebault had told them that he had signed his land over to Joseph LaMere's daughters; that Joseph LaMere paid the expenses of James Thomas and wife and gave them each a quart of whiskey when they had so testified; affiants further say that the facts which Joseph LaMere asked them to testify to were not true, that is that My Soul Tiebault had not told affiants, Mr.

James Thomas and wife that he had signed his land over to the daughters of Joseph LaMere, and that such evidence is untrue; that these affiants are now telling the truth; that they have not been bribed or persuaded by anyone, and that their statements are free and voluntary, and further affiants saith not.

LOUIS GRAYHAIR,

Her
JANE FORECLOUD, (Thumb print)
Mark.

Subscribed and sworn to before me this 24th day of November, 1913.

A. P. COLEMAN,
Notary Public.

[SEAL]

In the Department of the Interior of the United States of America.

In the Matter of the Estate of MY SOUL TIEBAULT, Deceased. } AFFIDAVIT OF HARRY RAVE

STATE OF NEBRASKA, Thurston County, SS:

Harry Rave being first duly sworn deposes and says that he is forty-six years old; that he was not called as a witness in the My Soul Tiebault Estate; that he knew My Soul Tiebault from boy-hood, as their homes joined; that affiant knew him to be a drunkard who got drunk on every opportunity and often became unconscious; that he has seen him fall from his pony many times from drunkenness, and often seen him unconscious from drink; affiant further says that My Soul Tiebault talked to him about six months before his death near the home of the deceased; that affiant's wife was present; that deceased was not drinking; that he told affiant that he understood that he had signed some papers in Pender which would give his land to Joseph LaMere at his death, and that he, My Soul Tiebault, wanted to get an interpreter to go with him to Pender to look up the papers that he had signed, and see if it were true that he had signed any such papers and what the effect would be, and that if he had signed any such papers he wanted to take whatever action was necessary to get clear and free from them; he said that it would not be

rights. The case was pending there when Judge Bean rendered his decision of September 12, 1910, in the United States Circuit Court for the District of Oregon, in Bond v. United States (181 Fed. 613), holding, in effect, that the Act of June 25, 1910 (36 Stat. 855), removed from the Federal Courts any jurisdiction to determine the heirs to the trust allotments of deceased Indians which may have been conferred upon such courts by the Act of February 6, 1901 (31 Stat., 760), and placed it again solely under the jurisdiction of the Secretary of the Interior.

On June 26, 1911, stipulations were entered into by the attorneys in the Tiebault suit for withdrawal from the Federal Court and submission to the Secretary, together with the evidence and depositions already taken. These were approved in the Department with the proviso

That nothing herein contained shall restrict the Secretary of the Interior from procuring and considering additional evidence in the case, if, in his opinion, it is deemed advisable to do so; and in event any such additional evidence be offered at the instance of the Secretary of the Interior, it is agreed that the complainants shall have opportunity to meet the same by offering testimony in rebuttal.

A Special Examiner, Mr. G. M. Tunison, using the evidence certified to by the clerk of the court and taking supplemental testimony at the Winnebago Agency, made a report in the matter in 1912, which was submitted to the Department by the Acting Commissioner of Indian Affairs on December 14, 1912, with the opinion

That the decree of adoption should be recognized as valid and binding and the estate awarded as recommended by the Special Examiner.

This opinion was accepted in the Department on January 11, 1913, and as recommended, the conclusions of the Special Examiner were approved and it was found

that by the adoption proceedings and the decree of the Thurston County Court in 1896 Julia Lamere and Alma Lamere became the legally adopted children of My Soul Tiebault, and as such adopted children were entitled to his whole estate, sharing equally therein.

On September 8, 1913, notice was posted at the Winnebago Agency, as required in Department regulations, of the applica-

Jane Forecloud to attend court when this case was tried and that affiant says she heard Louis Greyhair say that he did pay them but she does not know what sum.

Further affiant sayeth not.

Sd. SUSAN FOUR CLOUD.

Subscribed and sworn to before me this 27th day of Oct. 1913.

Interpreter
Frank Beaver.

Sd. JOHN S. SPEAR,
Superintendent.

EXHIBIT "3."

Land-Sales
88992—1907

May 15 1914

My dear Mr. Jones:

I have the honor to resubmit the Indian Inheritance case of My Soul Tiebault, a deceased Winnebago Indian of Nebraska, together with the petition of Harrison Tebo for a reopening and review of Department finding therein of January 11, 1913, with briefs by his attorneys, and attorneys for Julia and Alma Lamere who resist the petition.

The principal points of law involved arose through an adoption in the local court whereby Julia Lamere and Alma Lamere in a decree rendered on November 4, 1896, had conferred upon them rights of heirship in the estate of the said My Soul Tiebault. The decree recites that

It is therefore considered, adjudged and decreed, that the said infant children be, and they hereby are fully and legally adopted by the said My Soul Tiebault, and that the said children shall be known by, and have the name of, Alma Lamere Tiebault and Julia Lamere Tiebault, respectively; and that the said children shall have all the legal rights, privileges, immunities and heirships, as if they had been born to the said My Soul Tiebault in lawful wedlock.

The allottee died on or about February 10 (given also as February 15), 1906, whereupon his original estate, together with interests inherited by him, was claimed by Julia and Alma Lamere and suit was brought in the United States Circuit Court for the District of Nebraska to establish their

In the Department of the Interior of the United States of America.

In the Matter of the Estate of MY SOUL TIEBAULT, Deceased. } AFFIDAVIT OF JOHN RAVE

STATE OF NEBRASKA, Thurston County, SS:

John Rave being first duly sworn on oath and according to law, deposes and says that he is a Winnebago Indian; that he was not called as a witness when the evidence was taken in the My Soul Tiebault Estate; that he lived for many years as a neighbor to the deceased living about 400 yards away; that he lived there for more than ten years before he died; that he has often seen him under the influence of liquor; that affiant is informed that Joseph LaMere induced My Soul Tiebault to sign some papers affecting the descent of his land; that this affiant knows that Joseph LaMere has influenced others to do the same thing, and further affiant saith not.

JOHN RAVE.

SUBSCRIBED AND SWORN to before me this 24th day of November, 1913.

A. P. COLEMAN,
Notary Public.

[SEAL]

In re the Estate of My Sould Tiebault.

STATE OF NEBRASKA } ss.
County of Thurston }

Susan Fourcloud, being first duly sworn deposes and says that she is of lawful age; that she knew My Soul Tiebault; that at one time affiant was married to My Soul Tiebault according to Indian Custom; that she lived with him over a year; that at one time Joe Lamere asked her to testify to the fact that Julia and Alma Lamere were adopted by My Sould and to give this as her personal knowledge; that he told her he would pay her if she so testified but that he did not state any amount; that she did not so testify for she knew it was not true; that Joe Lamere offered to pay Louis Greyhair and

right for his land to go to Joseph LaMere; that his brother's children had taken good care of him and that he wanted them to have his land; and further affiant saith not.

HARRY RAVE.

SUBSCRIBED AND SWORN to before me this 24th day of November, 1913.

A. P. COLEMAN,
Notary Public.

[SEAL]

In the Department of the Interior of the United States of America.

In the Matter of the Estate of MY SOUL TIEBAULT, Deceased. } AFFIDAVIT OF WILLIAM HENSLEY

STATE OF NEBRASKA, Thurston County, SS:

William Hensley being first duly sworn deposes and says that he is a Winnebago Indian; that he was present when the evidence was taken in the My Soul Tiebault case; that certain witnesses were persuaded to say My Soul Tiebault was not a drunkard and that this affiant is informed that some of the material statements in this evidence was not truly interpreted; this affiant further says that he and his son Albert Hensley were in Pender at the time the adoption proceedings were had before the County Court in which My Soul Tiebault was supposed to adopt certain children of Joseph LaMere; that at that time My Soul Tiebault was drinking and under the influence of liquor; that he told this affiant that Joseph LaMere had asked him to sign some papers for his daughters, and that on the following morning Joseph LaMere showed him the papers and told him that he, My Soul Tiebault, had signed them; that My Soul Tiebault rode home with affiant; that he had two bottles of whiskey which he said Joseph LaMere had bought for him and given him; that after that time, affiant knows that Joseph LaMere furnished My Soul Tiebault with a great deal of whiskey, and that he drank heavily until the time of his death; that he was under the influence of liquor at one time and fell off a wagon which caused his death.

WILLIAM HENSLEY.

SUBSCRIBED AND SWORN to before me this 24th day of November, 1913.

A. P. COLEMAN,
Notary Public.

[SEAL]

tion of Julia and Alma Lamere for a patent in fee for the lands. The notice, signed by the Superintendent, set out that

Unless some good reason is shown why such patent should not be issued, the Commissioner of Indian Affairs will, after 30 days from the date thereof, consider said application with the view of recommending to the Secretary of the Interior that the patent applied for be issued under the provisions of the Act of May 8, 1906 (34 Stat., 182).

Any person acquainted with the applicant and knowing anything which in his judgment would tend to show that such patent ought not to be issued, is urgently requested to make it known to the undersigned.

Apparently no reasons why patent should not issue were filed with the Superintendent; but as hereafter shown a protest against such action was filed in this Office. His report on the application was received in this Office on October 13, 1913, in which he recommended that patent be granted "if the way is clear to do so." Applicants' signatures appear not as Julia Lamere Tiebault and Alma Lamere Tiebault, but as Julia Lamere Nickadeit and Alma Lamere.

In the meantime Superintendent Spear had been instructed in Office telegram of September 29, 1913, to withhold all funds accrued or deposited to credit of My Soul Tiebault and Clara Tiebault estates until further instructions and to report immediately whether funds therefrom had been paid out during 1913 and the amounts.

On October 8, 1913, five days before receipt of the application in this Office, Harrison Tebo appeared here in person and filed a formal motion for a review and reconsideration of the inheritance question and an opportunity to produce new evidence to substantiate his assertions of "fraud" in connection with "the alleged adoption"; and requested that no patent to the Lameres be issued pending the result of his motion.

On October 18, 1913, he was advised that 30 days would be allowed for the submission of "any new evidence or additional facts, or any questions of law"; and Honorable Norris Brown of the law firm of Brown, Baxter and Van Dusen, representing Julia and Alma Lamere, was likewise advised of this action and that he would be given "opportunity to answer, before this case is reconsidered in this Office or the Department."

On November 17, 1913, the Tebo attorneys requested an extension to December 15 in which "to make a showing for the reopening of the case." The time was allowed but their memorandum brief and affidavits were submitted on December 2, 1913. A brief from the Lamere attorneys more particularly on the question of the Secretary's authority to reopen the case but covering also the adoption question was received on January 21, 1914; the Tebo attorneys' brief in answer thereto, on February 27, 1914, and "Reply Brief" to it by the Lamere attorneys on March 23, 1914.

Counsel for the Lameres object to any review or reconsideration of the case, taking the position that

1. The Secretary of the Interior is without jurisdiction to annul a decision of his predecessor because such a decision is a judicial act and can only be reviewed, if reviewable at all, by the courts.

2. The Secretary of the Interior is without power under the Act of June 25, 1910, to review or vacate the adoption decree entered by the county court of Thurston County, Nebraska, on the 14th day of November, 1896.

After citations in support of their arguments, they sum up the law from the view point of their briefs with special application to the Tiebault case, in the following words:

1. A Secretary of the Interior is without jurisdiction to review, modify or vacate a decision of his predecessor.

2. The adoption decree of the county court of Thurston County acting within its jurisdiction, from which no appeal was taken, is not subject to collateral attack, and the Secretary of the Interior is without power of jurisdiction to ignore, modify or vacate said decree.

3. The motion for a rehearing in the case at bar should be overruled.

In a second brief they assert in substance that as heirs Julia and Alma Lamere took the same title that Tiebault had—i. e., a patent in fee simple; that the United States has no interest in such title which would permit a review, or revision or modification of the finding of January 11, 1913.

The position taken by defendants' counsel is one not heretofore seriously insisted upon with respect to adjudication

before the Secretary of the Interior, involving inherited Indian property. The lands in question—160 acres—were held by My Soul Tiebault under two patents each containing a 25-year trust clause, issued to him, one on April 25, 1900 and the other on December 9, 1893, both under the provisions of the Act of February 8, 1887 (24 Stat., 388). The third tract—40 acres—was the allotment of his deceased daughter, Clara Tiebault, and was likewise covered by a trust patent under the same Act, issued to her on December 9, 1893.

The principle controlling in the cases cited—Porter v. Parker (68 Neb. 388) and Libbey v. Clark 118 U. S. 250, have never been applied, in the administration of Indian matters by the Department, to overcome the declaration of trust contained in the patents issued under the Act of February 8, 1887 (24 Stat. 388) or any other Acts containing like provisions as to restrictions. Special attention is directed to the latter case and to the fact that it "was cited with approval and followed by the Supreme Court in U. S. v. Paine Lumber Co. (206 U. S. 473). It is stated by counsel that in this case

the court had under consideration a treaty containing similar provisions as those in the allotment patent issued to My Soul Tiebault.

The citation follows:

The restraint upon alienation must not be exaggerated. It does not of itself debase the right below a fee simple. Libbey v. Clark, 118 U. S., 250. The title is held by the United States, it is true, but it is held 'in trust for individuals and their heirs to whom the same were alloted.' The considerations, therefore, which determined the decision in United States v. Cook, do not exist. The land is not the land of the United States, and the timber when cut did not become the property of the United States. And we cannot extend the restraint upon the alienation of the land to a restraint upon the sale of the timber consistently with a proper and beneficial use of the land by the Indians,—a use which can in no way affect any interest of the United States.

Counsel's statement as to the similarity between the provisions of the treaty and laws controlling the lands which were the subject of this suit and the provisions in the Tiebault patent is misleading. The court's ruling that the United States could not recover for timber sold without its consent was based on a consideration of the character of title by

which the Stockbridge and Munsee tribes held their allotments from which such timber was cut.

In Article III of the Stockbridge and Munsee treaty of February 5, 1856 (11 Stat. 633) it was provided that the United States would hold the lands in trust for the allottees and would issue to them non-assignable certificates

in suitable form guaranteeing and securing to the holders their possession and an ultimate title to the land;

the certificates to expressly prohibit sale and transfer; that at the end of ten years, certain conditions being fulfilled, the restrictions on the power of sale should be withdrawn "and a patent issued in the usual form." Article XI provided for the adoption of such policies in the management of the lands as the President might deem most beneficial to the holders, or for such further provision by Congress as experience might prove necessary. Section 8 of the Act of February 6, 1871 (16 Stat. 404) regulated the amount of lands to be assigned and allotted, and repeated the provision as to inalienability. To correct the effect of the interpretation placed by the Government upon the former acts, Congress, thus setting out its purpose, provided in the Act of March 3, 1893 (27 Stat. 744)—

And all members who entered into possession of lands under the allotments of eighteen hundred and fifty-six and of eighteen hundred and seventy-one, and who by themselves or by their lawful heirs have resided on said lands continuously since, are hereby declared to be owners of such lands in fee simple, in severalty, and the Government shall issue patents to them therefor.

It will be noted that these provisions are not at all identical to those contained in the Act of February 8, 1887 (24 Stat. 388) under which the Tiebault patent was issued, and in which a trust for a definite period was declared. The view taken by the court in this lumber case apparently was influenced somewhat by the fact that in the sale and the purchase of the timber good faith on the part of vendor and vendee was evidenced throughout and by the further fact that neither the allottee nor the United States had suffered any loss through the transaction. The object of the cutting the sale of the timber was found to be the support of the family, and it was held that this was only permitting what was intended—a beneficial use of the land.

Mr. Justice McKenna distinguished this case from that of U. S. v. Cook (19 Wall 591, 592), and the character of title of the Stockbridge and Munsee Indians from that considered in the latter case.

The Paine Lumber Company case is not applicable to the present case. The contention therefore requires no further consideration here. The heirs, whoever they may be, take the equitable title only.

The Act of June 25, 1910 (36 Stat. 855) provides that

The Secretary of the Interior, upon notice and hearing, under such rules as he may prescribe, shall ascertain the legal heirs of such decedent, and his decision thereon shall be final and conclusive.

It provides for further procedure in the settlement of the estate—by sale, partition or issuance of patents in fee to the competent heirs. No time is set in which settlement must be accomplished. The trust must remain until removed by sale, patent in fee simple or expiration of period; and so long as it remains, the head of the Interior Department is charged with the proper administration of the estate. Corrections, revisions or vacations of former adjudications during the period of the restricted title, necessitated in the interests of justice or equity, are therefore entirely within the province of the Secretarial office.

We have the support of Mr. Justice Lamar on this point in Knight v. U. S. Land Association (142 U. S., 161, 177), where he endorses the action of a Secretary of the Interior in a public land case, as follows:

As was said by the Secretary of the Interior on the application for the recall and cancellation of the patent in this pueblo case (5 Land Dec. 494): 'The statutes in placing the whole business of the Department under the supervision of the Secretary, invest him with authority to review, reverse, amend, annul or affirm all proceedings in the Department having for their ultimate object to secure the alienation of any portion of the public lands, or the adjustment of private claims to lands, with a just regard to the rights of the public and of the private parties. Such supervision may be exercised by direct orders or by review on appeals. The mode in which the supervision shall be exercised in the absence of statutory direction may be prescribed by such rules and regulations as

the Secretary may adopt. When proceedings affecting titles to lands are before the Department the power of supervision may be exercised by the Secretary whether these proceedings are called to his attention by formal notice or by appeal. It is sufficient that they are brought to his notice. The rules prescribed are designed to facilitate the Department in the dispatch of business, not to defeat the supervision of the Secretary.'

. . . (181) . .

The powers and duties of the Secretary of the Interior were no greater under the acts under consideration in the cases to which we have referred than they are under sections 441, 453 and 2478 of the Revised Statutes. They were, practically, and to all intents and purposes, the same. The general words of those sections are not supposed to particularize every minute duty devolving upon the Secretary and every special power bestowed upon him. There must be some latitude for construction. In the language of this court in the late case of Williams v. United States (138 U. S., 514, 524): 'It is obvious, it is common knowledge that in the administration of such large and varied interests as are intrusted to the Land Department, matters not foreseen, equities not anticipated, and which are, therefore, not provided for by express statute, may sometimes arise, and, therefore, that the Secretary of the Interior is given that superintending and supervising power which will enable him, in the face of these unexpected contingencies, to do justice.' See also Lee v. Johnson, 116 U. S., 48.

It makes no difference whether the appeal is in regular form according to the established rules of the Department, or whether the Secretary on his own motion, knowing that injustice is about to be done by some action of the Commissioner, takes up the case and disposes of it in accordance with law and justice. The Secretary is the guardian of the people of the United States over the public lands. The obligations of his oath of office oblige him to see that the law is carried out, and that none of the public domain is wasted or is disposed of to a party not entitled to it.

As to the Secretary's guardianship "of the people of the United States over the public lands," it is believed that his obligations as guardian of Indians and over Indian properties and interests, granted or recognized by solemn treaties, agreements, and enactments, bind him to even more careful and

patient consideration, if that be possible, in the handling of their individual inherited lands.

Certain judicial and quasi-judicial functions, practically inseparable from the executive functions, have attached to the office of Secretary from the beginning without special detailed enactment, and have continued to be his exclusively until by special Congressional enactments they were brought, in some localities and conditions, within the jurisdiction of the State or Federal courts. The Act of June 25, 1910, provided for certain formalities in the carrying out of the inherent judicial and executive functions, already vested in the Secretary of the Interior; and, to avoid uncertainty, conflict and expensive and useless litigation it specifically confined jurisdiction in these cases to the Secretary of the Interior by declaring that his adjudications therein "shall be final and conclusive"—as against any other person, interest, tribunal or Department. Under no reasonable construction can it be said that jurisdiction in an Indian inheritance case, thus limited to the Secretary of the Interior, confined the jurisdiction in any case solely and absolutely to the one person who might be occupying the office of Secretary at the time the case was initiated.

No law, rule or binding practice has been cited, applicable to preclude a review or rehearing in this or any similar case. The right of review and modification or reversal, when legal title had not already vested under an act of Congress was declared in an opinion by Mr. Justice Brewer in Michigan Land & Lumber Company v. Rust (168 U. S., 589, 892); and again by Mr. Justice Peckham in Beley v. Nepthaly (169 U. S. 353, 364), where he said

The fact that a decision refusing the patent was made by one Secretary of the Interior, and, upon a rehearing, a decision granting the patent was made by another Secretary of the Interior, is not material in a case like this. It is not a personal but an official hearing and decision, and it is made by the Secretary as such Secretary, and not by an individual who happens at the time to fill that office, and the application for a rehearing may be made to the successor in office of the person who made the original decision, provided it could have been made to the latter had he remained in office.

The doctrine has been employed consistently since, notably in Parcher v. Gillen (26 L. D. 34, 42); in the Lizzie Bergen case (30 L. D. 258) and Harkrader v. Goldstein (31 L. D. 87).

The contentions of Messrs. Saxton and Brown, Baxter & Van Dusen, as to lack of jurisdiction in the Secretary of the Interior to review a former finding, made by his predecessor in office, or to reopen a case within the period of his supervisory jurisdiction over the subject or rights in dispute are thus fully met and overcome, and accordingly are overruled. The Tiebault Inheritance Case is open and subject to review on any or all questions of law or facts, as contained in the record, or to a rehearing on the merits of the case should rehearing or oral argument be deemed advisable.

I respectfully recommend that my conclusions on the jurisdictional point in this matter, as herein indicated, be approved.

The accompany contention of the Lamere counsel, that the Secretary of the Interior is without power under the Act of June 25, 1910, to review or vacate the adoption decree entered by the County Court of Thurston County, Nebraska, on the 14th day of November, 1896, which was argued in the same briefs with the jurisdictional point, is a question of law wholly separable therefrom. Consideration of this and other questions included in the briefs, not pertinent to a conclusion on the jurisdictional question I deem it proper to defer until the contestants have had due notification of the ruling on the preliminary issue.

Cordially yours,
(Signed) CATO SELLS,
Commissioner.

Approved June 6, 1914.
(Signed) A. A. JONES,
First Assistant Secretary.

EXHIBIT "4."

In the Department of the Interior of the United States of America.

In the Matter of the Estates of MY SOUL TIEBAULT and CLARA TIEBAULT, Deceased Winnebago Indians.	AFFIDAVIT OF HARRISON TIEBAULT.

STATE OF NEBRASKA }
} ss.
Thurston County. }

Harrison Tebo, being first duly sworn, deposes and says that he is one of the heirs of My Soul Tiebault and Clara Tiebault, deceased Winnebago allottees; that he did not know of the adverse decision entered in the above named estates by the Secretary of the Interior granting the estates to the adopted children of Joseph LaMere until June 1913, and that none of the heirs of My Soul Tiebault and Clara Tiebault knew of this until that date; that he was not negligent in the matter of asking for a re-hearing and in that particular affiant says that in the early part of August he went to the Indian Office at Winnebago on the Winnebago Reservation and took the matter up with the officials and employees there to learn the necessary steps to be taken to get a re-hearing; that there are seven heirs to the My Soul Tiebault and Clara Tiebault estates and that they live some distance from each other and that it took some time to get them together to determine what was to be done; that after the decision above referred to, these heirs had no attorney, and that it was some little time after August until counsel were employed and that he had no means to employ an attorney or to apply for a re-hearing until recently, and that this affiant and the other heirs have not been negligent in their efforts to have this cause re-heard and retried; and further affiant saith not.

HARRISON TEBO.

SUBSCRIBED AND SWORN to before me this 13th day of December, 1913.

A. P. COLEMAN,
Notary Public.

[SEAL]

EXHIBIT "5."

The following is a transcript of portions of the testimony taken before a Special Examiner of the Department of the Interior, in the matter of the estate of My Soul Tiebault, a deceased Winnebago Indian, and of portions of the testimony taken for the Circuit Court of the United States in and for the District of Nebraska in the case in which Julia Lamere Tiebault et al were Plaintiffs v. The United States of America et al., Defendants, which evidence was by stipulation transcribed and filed in the matter of the estate by My Soul Tie-

bault, a Winnebago Indian, and was considered by the Honorable Secretary of the Interior in the determination of the heirs in that estate.

J. M. CURRY, called as a witness on behalf of the complainants, * * *

* * * * *

6 Q. Did you ever hold the position of County Judge in Thurston County, Nebraska?

A. Yes, sir.

7 Q. During what period, Judge, did you hold that position or office?

A. Well, now, the exact years I am unable ot give. I was County Judge in 1896; I refreshed my memory by looking at the record, but the entire period I do not remember.

* * * * *

19 Q. That is the date shown, Judge, October 5, 1896. Did you observe My Soul Tiebault, or talk with him, that day, while the adoption proceedings were going on?

A. Some, very little.

* * * * *

22 Q. Who acted as interpreter?

A. Oliver Lamere.

* * * * *

134 Q. It did not occur to you at that time, did it, Judge, that it was rather an unusual proceeding for an old Indian 65 or 70 years old to adopt a one year old baby, did it?

(Objected * * *)

A. Yes, sir, it did occur to me.

135 Q. And did it not occur to you, Judge, at that time that the sole and only object of the adoption proceedings was for the purpose of the Lamere children inheriting the title to the property belonging to My Soul Tiebault?

(Objected * * *)

A. That was my understanding that the only object was that the children might inherit that property.

* * * * *

137 Q. (Repeated) You did not expect that My Soul Tiebault should take charge of those two children and care for them and take them as his own children, did you?

(Objected * * *)

A. Why I did not have any expectation about it; I had an idea of the purpose and in fact I think there was no concealment of the purpose.

* * * * *

OLIVER LAMERE, called as a witness * * *

* * * * *

170 Q. What relation are you to Julia and Alma Lamere?
A. They are cousins of mine.

171 Q. Did you know My Soul Tiebault?
A. Yes, sir.

172 Q. How long did you know him?
A. I have known him ever since I was able—was old enough to know any one.

* * * * *

184 Q. Now then, could My Soul Tiebault write his name?
(Objected * * *)
A. No, sir, I do not think he could.

* * * * *

248 Q. You was only there in Judge Curry's office one time was you not?
A. Why, you mean that particular day or any other time afterwards.

249 Q. Well, with reference to this matter you was only in his office one time was you not?
A. Yes, sir.

* * * * *

256 Q. These children Julia and Alma have always been known by the name of Lamere since the adoption proceedings?
(Objected * * *)
A. That is all I know them by.

257 Q. You never heard them called by the name of Tiebault in any way?
A. No, sir.

* * * * *

260 Q. And My Soul was an old man, 70 years old or thereabouts, was he not?
(Objected * * *)
A. About that, I guess.

261 Q. And he had no family at that time of his own at all, had he, or no woman that he was living with?
A. No.

* * * * *

266 Q. Now, after Joseph Lamere and family moved away from My Soul's allotment, none of the other children lived with him, did they, Julia or Alma?
(Objected * * *)
A. I do not think they did.

* * * * *

275 Q. Who requested you to go there and interpret in this proceeding?
A. I don't remember exactly who it was; it was either Sloan or Joe Lamere.

* * * * *

LOUIS GRAYHAIR, called as a witness * * *

* * * * *

310 Q. Did you ever see Julia and Alma Lamere at My Soul Tiebault's home at any time?
A. No, he was all alone; he was a bachelor.

* * * * *

JOSEPH LAMERE, called as a witness * * *
562 Q. You are the guardian and natural father of the complainants in this case, Julia and Alma Lamere, are you?
A. Yes, sir.

* * * * *

747 Q. What was the age of Alma at the time of the adoption proceedings?

(Objected * * *)
A. About a year old.

* * * * *

764 Q. You always had charge of the allotment of Julia Lamere after this alleged adoption proceeding?
A. Yes.

765 Q. Had it fenced in out there in your own ranch?
A. Yes.

765 Q. And you never leased it through the Indian office at all?
A. I don't think I have.

* * * * *

790 Q. What is the fact about your ever giving any intoxicating liquor to My Soul Tiebault, at any time?

(Objected * * *)

A. At different occasions—different times I might say, when he is at my house I have gone and bought a pint of whiskey and he and I would drink together socially evenings together; at different times, but I have never gave him any to take away with him, or gave him any more than I have stated.

* * * * *

CLARENCE FISHER, called as a witness * * *

* * * * *

74 Q. State whether or not Julia Lamere or Alma Lamere lived upon this allotment with My Soul Tiebault during any of that time?

(Objected * * *)

A. No, sir, not any of the time.

* * * * *

92 Q. What was said by My Soul Tiebault at that time concerning the adoption proceedings of Julia Lamere and Alma Lamere?

(Objected * * *)

A. He said he never signed any papers when he was sober. He was eating at the table——

* * * * *

283 Q. Did he not tell you that the county Judge had helped him to adopt the children?

A. He said that he never knowed that he done it; he was telling that they told him he adopted them. He claims that he never signed any papers in his sober mind. That is what he said.

* * * * *

376 Q. What was the custom of My Soul Tiebault, if you know, and if you know, with reference to becoming intoxicated when he could get hold of liquor?

(Objected * * *)

A. He came back drunk some times; I can not give you the date and time when he done it.

377 Q. How many times did you see him drunk during those years?

(Objected * * *)
A. Every time he could get a chance.

* * * * * *

MRS. MARTHA PEYER FISHER, called as a witness * * *

* * * * * *

464 Q. Do you know whether My Soul Tiebault indulged in the use of intoxicating liquors?

(Objected * * *)
A. Yes.

465 Q. You may state to what extent you know him to indulge in intoxicating liquors?

(Objected * * *)
A. He was drunk every chance he got; every chance he would get it and drink it.

* * * * * *

527 Q. Do you remember in that conversation of My Soul Tiebault saying anything about having trouble with his leases?
A. Yes, he leased through Joe; Joe was the middle-man I guess you call it.

528 Q. Joe Lamere you mean?
A. Yes, Joe Lamere, he leased through him.

529 Q. Joseph Lamere looked after the leasing?
A. Just leased the land; he claimed that he got good men, btu I guess he kept that money or half of the money.

530 Q. You do not know that?
A. Yes, I know it.

* * * * * *

FRANK TEBO, called as a witness * * *

* * * * * *

684 Q. What did he say about some papers in regard to the Joseph Lamere children?

(Objected * * *)
A. My Soul said to me that Joseph Lamere made him sign some papers when he was drunk. He said he signed some papers to Julia Lamere.

* * * * * *

691 Q. Was Julia Lamere or Alma Lamere present at the time My Soul Tiebault died, or at his funeral?

(Objected * * *)

A. No.

* * * * *

708 Q. What was the first thing My Soul Tiebault said?

A. Joseph made me drink some whiskey and made me sign some papers and I would like to break them papers, but just as soon as I can.

* * * * *

JAMES YELLOWBANK, called as a witness * * *

* * * * *

739 Q. During the time you lived there on the allotment with My Soul Tiebault did you have any talk with him about having made any papers to either of the Lamere children?

(Objected * * *)

A. He says he heard so and he was telling him that he had signed some papers for Joseph Lamere's children and he had some notion of going and fixing up those papers over again, because he did not want to sign any papers; he was drunk at the time he signed those papers.

740 Q. Was that what My Soul Tiebault said about it?

(Objected * * *)

A. Yes.

741 Q. Do you know whether My Soul Tiebault ever got drunk while he lived there on the reservation?

(Objected * * *)

A. I know he got drunk lots of times; hard to keep count how many times he got drunk.

* * * * *

744 Q. Are you related to My Soul Tiebault in any way?

A. No.

* * * * *

773 Q. Did he say what the papers were about?

A. It was signing his land over to Joseph Lamere'sdaughter; that he was drinking when he signed those papers and he wants to fix them over.

Before the Secretary of the Interior of the United States.

In the matter of the petition of Julia Lamere Tiebault and Alma Lamere Tiebault, a minor, by her guardian, Joseph A. Lamere, heirs of My Soul Tiebault, deceased, to be awarded possession of, and the rents, issues and profits from certain allotments owned by My Soul Tiebault at his decease.

Testimony Taken Before G. M. Tunison, Special Examiner of Inherited Estates, at Winnebago Agency on December 19, 1911.

* * * * *

THOMAS L. SLOAN, being first duly sworn * * *

* * * * *

(Pages 6 to 8)

Q. Do you recall the adoption proceeding whereby Julia Lamere and Alma Lamere were adopted by My Soul Tiebault in the county court of Thurston county, Nebraska?

(Objected * * *)

(Explanation by Attorneys and Examiner.)

(Question repeated.)

A. I do.

Q. Who was the attorney in those proceedings before the county court of Thurston county, Nebraska?

A. I was.

Q. By whom were you employed?

A. By My Soul Tiebault.

* * * * *

(Page 13.)

Q. My Soul Tiebault was a Winnebago?

A. He was.

Q. Did he speak the English language?

A. He spoke some.

Q. It was a very small amount of English language that he spoke?

A. He spoke some English language and it was a small amount.

* * * * *

(Page 14.)

Q. And you talked then to My Soul Tiebault in the English language and he talked to you as best he could?

A. We talked together through an interpreter part of the time.

Q. And Joe Lamere was interpreter part of the time?

A. Yes.

* * * * *

EXHIBIT "6."

Annuity roll 1899—page 13

No. Last	No. Pres.			Age	Sex	Per capita	Amt. paid	Marks & Sig.	Sig. of witnesses	Date of receipt
342	348	Joseph Lamere	HF	49	m					
343	9	Mrs. Jos. Lamere	Wife	43	f					
344	350	Julia Lamere	Dau.	16	f					
345	1	Emma Lamere	Dau.	14	f					
346	2	Daniel Lamere	Son	11	m					
347	3	Sarah Lamere	Dau.	9	f					
348	4	Elva Lamere	Dau.	7	f			Joseph	David St. Cyr	
349	5	Elma Lamere	Dau.	4	f		40.00	Lamere	Craig L. Spencer	ck No. 2171
Annuity roll 1899—page 14										
348	341	Joseph Lamere	HF	50	m	15.00				
349	342	Mrs. Jos. Lamere	Wife	44	f	15.00				
350	343	Julia Lamere	Dau.	17	f	15.00				
351	344	Emma Lamere	Dau.	15	f	15.00				
352	345	Daniel Lamere	Son	12	m	15.00				
353	346	Sarah Lamere	Dau.	10	f	15.00				
354	347	Elva Lamere	Dau.	8	f	15.00		Joseph	David St. Cyr	Nov. 9, 1899
355	348	Elma Lamere	Dau.	5	f	15.00	120.00	Lamere	E. B. Atkinson	ck. No. 1157
Annuity roll 1900—page 14										
341	344	Joseph Lamere	HF	50	m	5.00				
342	345	Mrs. Jos. Lamere	Wife	44	f	5.00				
343	346	Julia Lamere	Dau.	17	f	5.00				

No. Last	Pres.			Age	Sex	Per capita	Amt. paid	Marks & Sig.	Sig. of witnesses	Date of receipt
344	347	Emma Lamere	Dau.	15	f	5.00				
345	348	Daniel Lamere	Son	12	m	5.00				
346	349	Sarah Lamere	Dau.	10	f	5.00				
347	350	Elva Lamere	Dau.	8	f	5.00		Joseph		Apr. 26, 1909
348	351	Elma Lamere	Dau.	5	f	5.00	40.00	A. Lamere	David St. Cyr	No. 4128
Annuity roll 1900—page 15										
344	342	Joseph Lamere	HF	51	m	12.60				
345	343	Mrs. Jos. Lamere	Wife	45	f	12.60				
347	344	Emma Lamere	Dau.	16	f	12.60				
348	345	Daniel Lamere	Son.	13	m	12.60				
349	346	Sarah Lamere	Dau.	11	f	12.60				
350	347	Elva Lamere	Dau.	9	f	12.60		Joseph	David St. Cyr	Oct. 15, 1900
351	348	Elma Lamere	Dau.	6	f	12.60	88.20	Lamere	E. B. Atkinson	ck No. 6712
Annuity roll 1901—page 15										
342	350	Joseph Lamere	HF	52	m	12.72				
343	351	Mrs. Jos. Lamere	Wife	46	f	12.72				
344	352	Emma Lamere	Dau	17	f	12.72				
345	353	Daniel Lamere	Son	14	m	12.72				
346	354	Sarah Lamere	Dau.	12	f	12.72				
347	355	Elva Lamere	Dau.	10	f	12.72		Joseph		
348	356	Elma Lamere	Dau.	7	f	12.72	89.04	Lamere	D. St. Cyr	
Annuity roll 1902—page 17										
350	339	Joseph Lamere	HF	53	m	8.74				

xxxi

No. Last	No. Pres.			Age	Sex	Per capita	Amt. paid	Marks & Sig.	Sig. of witnesses	Date of receipt
351	340	Mrs. Jos. Lamere	Wife	47	f	8.74				
353	341	Daniel Lamere	Son	15	m	8.74				
354	342	Sarah Lamere	Dau.	13	f	8.74				
355	343	Elva Lamere	Dau.	11	f	8.74				
356	344	Elma Lamere	Dau.	8	f	8.74	52.44	Joseph Lamere	Levi St. Cyr	Dec. 4, 1902 20000
Annuity roll 1903—page 18										
339	336	Joseph Lamere	HF	54	m	8.67				
340	337	Mrs. Jos. Lamere	Wife	48	f	8.67				
341	338	Daniel Lamere	Son	16	m	8.67				
342	339	Sarah Lamere	Dau.	14	f	8.67				
343	340	Elva Lamere	Dau.	12	f	8.67				
344	341	Elma Lamere	Dau.	9	f	8.67				
	342	Oc-see-ah-kaw	Dau.	1	f	8.67	60.69	Joseph Lamere	T. Sharp Levi St. Cyr	Nov. 24, 1903 3279 Born 12/26/02
Annuity roll 1904—page 18										
336	333	Joseph Lamere	HF	55	m	8.78				
337	334	Mrs. Jos. Lamere	Wife	49	f	8.78				
338	335	Daniel Lamere	Son	17	m	8.78				
339	336	Sarah Lamere	Dau.	15	f	8.78				
340	337	Elva Lamere	Dau.	13	f	8.78				
341	338	Elma Lamere	Dau.	10	f	8.78				
342	339	Oc-see-ah-kaw (Catharine A. Lamere)	Dau.	2	f	8.78	61.46	Joseph Lamere	L. St. Cyr I. M. Wilson	Nov. 26, 1904 5881

No. Last	No. Pres.			Age	Sex	Per capita	Amt. paid	Marks & Sig.	Sig. of witnesses	Date of receipt
Annuity roll 1905—page 18										
333	333	Joseph Lamere	HF	56	m	8.87				
334	334	Mrs. Jos. Lamere	Wife	50	f	8.87				
336	335	Sarah Lamere	Dau.	16	f	8.87				
337	336	Elva Lamere	Dau.	14	f	8.87				
338	336	Elma Lamere	Dau.	11	f	8.87				
339	337	Catharine A. Lamere	Dau.	3	f	8.87	53.22	See receipt No. 45		Dec. 28, 1905 10482
Annuity roll 1907—page 20										
333	335	Joseph Lamere	HF	57	m	8.90				
334	336	Mrs. Jos. Lamere	Wife	51	f	8.90				
335	337	Sarah Lamere	Dau	17	f	8.90				
336	338	Elva Lamere	Dau.	15	f	8.90				
337	339	Elma Lamere	Dau.	12	f	8.90				
338	340	Catharine A. Lamere	Dau.	4	f	8.90	53.40	Receipt attached No. 20		Feb. 1, 1907 17230

I, Albert H. Kneale, Superintendent and Specl. Disb. Agent at the Winnebago Agency, Nebr. hereby certify on honor that the above is a correct copy of the Annuity rolls in this Office from the year 1896 to 1907 inclusive in so far as same pertain to payments made to Joseph Lamere.

Supt. & Specl. Disb. Agent.

EXHIBIT "7."

DEPARTMENT OF THE INTERIOR

OFFICE OF INDIAN AFFAIRS

Washington, Sep. 19, 1913.

L-Sales
F I P

First Ass't Sec'y
Received
Sep. 19, 1913.
Department of
The Interior.

My Dear Mr. Jones:

In compliance with your request of June 21, 1913, that I let you know what I think about the Grace Cox inheritance case, I wish to say that I have heard arguments for and against the motion and have gone quite thoroughly into the matter myself.

The letter of the Indian Office of March 1, 1913, sets out the law points involved, which were in essence as follows:

That the Act of June 25, 1910, (36 Stat. L., 855), conferred upon the Secretary of the Interior indisputable and exclusive jurisdiction to ascertain the lawful heirs to Indian trust estates.

That this carries with it the power to inquire into personal stati of decedents and claimants and into any court proceedings, or acts preliminary to proceedings, intended to affect the title or descent of the lands or other restricted property.

That no decree of any court is binding upon the Secretary with respect to these estates, although such decrees and court records may be used as evidence.

That the Secretary is not only empowered to inquire into all phases of a proceeding affecting the domestic stati of decendent and claimants, but that in his office of guardian of Indian interests it is his duty to so inquire.

That where the primary incidents of an adoption were in operation during the lives of the adoptors and adopted—that is, where the relations of parent and child had actually been entered upon and equities accrued—a liberal construction of the adoption statutes should be had.

As to the facts and law the conclusions were, in effect:

That Grace Cox was incurably ill at the time of the alleged adoption.

That her deathbed statements, as related by Mrs. Merrick, whose testimony was undisputed, are sufficient indication of her ignorance of any proceedings or acts on her part with reference to her land.

That she was not competent, physicially, mentally or intellectually to initiate adoption proceedings.

That the parties were not in court, as recited in the decree.

That jurisdictional defects appear in the court record, and that they were of such character as to be fatal to a legal aodption.

That the record contained evidences of imposition and fraud and that the alleged status of Jennie Woodhull Cox was therefore not worthy of recognition.

That Grace Cox died unmarried and without issue, her nearest surviving kin being her nephew, Thomas P. Webster, and her half-sister, Emily Walker, who became her sole heirs, entitled to equal shares in Grace Cox's estate.

Department decision of May 8, 1913, rejecting office conclusions, proceeds on the theory that the Secretary of the Interior has judicial authority only to "ascertain" the heirs to an Indian trust estate, accepting without inquiry the stati of decedents or claimants as already determined in the local courts and applying the descent laws of the State to those stati. This doctrine with the consequent findings appears on page 3 of the decision, as follows:

In passing upon the validity of an adoption for the purpose of reaching a proper determination of the heirs of an allottee, the Department is bound by the statutes and decisions of the State as to adoption.

The record in this case shows that the adoption was consummated in a court of competent jurisdiction.

The Supreme Court of Nebraska in the case of *Ferguson* v. *Herr,* (64 Neb. 663, 94 N. W. 542), states

specifically that adoption statutes 'being peculiarly beneficial and altrustic' are not to be strictly construed, and that acts of adoption consummated under them are to be upheld 'if it be found that there was *substantial compliance* with the statute.'

That there was substantial compliance in the adoption proceedings in question.

That the Department is therefore unable to go behind the adoption decrees for the purpose of looking into the merits of the case.

That the status of Jennie Woodhull Cox as the adopted daughter of Grace Cox must be recognized by the Department.

The attorneys in this case made oral argument at a hearing before me and each had reasonable opportunity to present his views. We finally reduced the issues to one of law and one of fact—namely:

Whether or not the Secretary's judicial functions extend to an examination of all acts and conditions leading to a decree; or—to put it in form used in the decision—

Whether he has the power to go behind a court decree to look into the merits of the case—

Whether, having such power, the facts justify recognition of the status conferred on Jennie Woodhull by the decree.

Section 6 of the Act of August 7, 1882, (22 Stats. L., 341, 342), under which the Omaha Patents were issued, provides in part,—

That the laws of descent and partition in force in the said State (Nebraska) shall apply thereto after patents therefor have been executed and delivered.

The Secretary, in his determination of heirs to Indian estates, must, therefore, apply the laws of descent to the facts disclosed by the evidence. In the case of *Fosburgh* v. *Rogers,* (114 Mo. 122), the Court said that the Statutes of descent

must be understood as merely laying down general rules of inheritance, and not as completely and accurately defining how the *status* is to be created which gives the capacity to inherit. It does not un-

dertake to prescribe who shall be considered a child or a widow or a husband or what is necessary to constitute the legal relation of husband and wife or of parent and child. The inheritable right of an adopted child does not conflict with the statute of descents. The statute touching adoption points out who are to be considered "children" within the meaning of the statute of descents.

It will be seen therefore that the law of descent is *general* in its terms and merely provides for a *class* of persons, such as brother and sister or husband and wife. The Act of June 25, 1910, (36 Stat. L., 855), gives the Secretary of the Interior the *exclusive* right to decide, (as will be more fully shown hereafter) from the evidence adduced by his personal representative in the field, *what persons are to fill* the status of "brother" or "sister," or "child" or "kindred." In the Grace Cox case we have one person claiming as a "child" of the decedent, and two other persons denying that claim and contending that they are the decedent's heirs as half-sister and nephew or the "next of kin." The adoption decree, the briefs of the attorneys, the proof of the relationship of the half-sister and the nephew, to the decedent, were all submitted in the form of *evidence* by the Special Examiner, together with his conclusions for the conclusion of the Office, and the final decision of the Secretary. It should be borne in mind that the Departmental procedure, prescribed under the Act of June 25, 1910, *supra.*, and promulgated October 12, 1910, and the duties of the Secretary as Judge of the special tribunal created by the Act, are not analagous to those of any Court, State or Federal. The Secretary is, as it were, counsel for both plaintiff and defendant as well as judge upon the bench. He does not wait for a case to be brought before him, but on the contrary, institutes the necessary proceedings though his representatives in the field, collects the necessary evidence which may be in the form of decrees of the State courts, ex parte or interrogatory affidavits, etc., and renders his decision on legal and equitable grounds. The Act defining the scope of his duties specifically provides that his decisions shall be under *"such rules and regulations as he may prescribe."* It is evident, therefore, that the Secretary is *not* "bound" by the decisions or decrees of *any court* in inheritance matters affecting Indian trust lands, and that it rests entirely in his discretion, from the evidence submitted, as

to the determination of Indian heirs. In this connection attention is invited to the *uniform* decisions of the Federal Courts as to the power and authority of the Secretary of the Interior under the Act of June 25, 1910. That Act provides in part as follows:

> That when any Indian to whom an allotment of land has been made, or may hereafter be made, dies before the expiration of the trust period and before the issuance of a fee simple patent, without having made a will disposing of said allotment as hereinafter provided, the Secretary of the Interior, upon notice and hearing, under such rules as he may prescribe, shall ascertain the legal heirs of such decedent, and his decision thereon shall be final and conclusive.

In the case of *Bond* v. *U. S.* (181 Fed. 613), decided September 12, 1910, the above law was, for the first time, construed by the United States Circuit Court for the District of Oregon. This suit was brought in 1907 by an Indian, Frank Bond, for a decree adjudging him to be the sole heir of one Calapooya Jack, an Indian to whom an allotment of land was made in the Grande Ronde Reversation in 1891, under the Allotment Act of February 8, 1887. Among other things the Court said:

> By this Act (the Act of 1887) the United States retained title to and control over the allotted lands during the trust period, without any right in the allottee to do more than occupy and cultivate them under a paper or writing, showing that at a particular time in the future, unless it is extended by the President, he would be entitled to a regular patent, conveying the fee. The property did not cease, by the allotment, to be the property of the United States nor subject to its control, nor did the allottee cease to be a ward of the government. The title still remained in the government and the allottee remained in a condition of pupilage and dependency. The determination of all disputes concerning the allotment, its occupancy and possession and the general control of the Indian, remained with the Secretary of the Interior. * * *
>
> The title to the land and the consequent control thereof being in the United States, it was subse-

quently held in the Smith case, 194 U. S. 401, and the Kalyton case, 204 U. S. 458, that the sole authority for settling all controversies, necessarily including the determination of the title and incidentally the right to the possession of the Indian allotments while the same were held in trust by the United States, resided in the Secretary of the Interior and were not cognizable by any court, either state or federal, except as such authority has been expressly conferred by Act of Congress, * * *.

If, however, Congress intended, by the Act of 1901, to confer upon the courts jurisdiction to determine questions of heirship and descent as it may affect allotted lands during the trust period, it was a jurisdiction which it could take away at any time. This it did by making the Secretary of the Interior a special tribunal to determine such questions and declaring that his decision shall be "final and conclusive," thus making the jurisdiction conferred upon him exclusive, and to that extent operated as a repeal, by implication, of the Act of 1901, conferring jurisdiction on the courts. *U. S.* v. *Tynen*, 11 Wall, 88 *Eckloff* v. *D. C.*, 135 U. S. 240. And as there is no saving clause, the authority of the court immediately ceased over pending cases. In my judgment, therefore, the court has no jurisdiction of this suit but the question sought to be litigated must be determined by the Secretary of the Interior.

On January 12, 1911, the Act received its second construction by the United States Circuit Court in the case of *Pel-A-ta-Yakot* v. *The United States*, (188 Fed. 387). The Court said in part:

The provision is comprehensive, and clearly evinces the intention of Congress to confer exclusive jurisdiction to decide such controversies upon the Secretary of the Interior. That being true, it must be held that by implication the existing Act (of 1891) conferring jurisdiction upon the courts was repealed. *United States* v. *Tynen*, 11 Wall, 88, 20 L. Ed. 153. The repeal thus effected being without any reservation as to pending cases, the present case, although commenced prior to the passage of the repealing Act, must fall with the Act upon which it

rested. *Railroad Co.* v. *Grant,* 98 U. S. 398, 25 L. Ed. 231. Precisely the same question was involved in *Bond* v. *United States,* (C. C.) 181 Fed. 613, and with the conclusions there reached I am in accord.

The demurrer will be sustained, and the bill dismissed for want of jurisdiction.

The next case to construe the Act was that of *Parr* v. *Colfax,* (197 Fed. 302), in the Circuit Court of Appeals, Ninth Circuit, July 15, 1912. The Court said:

Indians (Par. 18). Lands—Descent—Determination—Appeal.

In a suit to determine heirship to an unpatented Indian allotment of the Umatilla reservation, the court decided that the equitable title to the land was in the Indian's widow. Eleven days after an appeal taken, Act Cong., June 25, 1910, C. 431, 36 Stat. 855, was passed, providing that when an Indian allottee dies before expiration of the trust period and before the issuance of a patent, without a will disposing of the allotment, the Secretary of the Interior, on notice and hearing, shall ascertain the legal heirs of such decedent, and his decision shall be conclusive. Held, that such act deprived the Circuit Court of Appeals of jurisdiction to entertain an appeal from a decree sued out after the statute went into effect, since it deprived the court of jurisdiction to enforce any judgment it might render on such appeal.

* * * * *

The question arises, what is the effect of that statute upon the appeal in this case? The contention is made that it has no application to a case which was begun before the date of the statute. But we do not think so. There is in the statute no clause reserving jurisdiction as to pending cases, and the meaning of the statute is clear that exclusive jurisdiction is given to the Secretary of the Interior of all cases where an Indian, to whom allotment of land had been made or might thereafter be made dies or had died intestate before the expiration of the trust period and before the issuance of the fee simple patent. That construction being given, the statute deprived the Circuit Court of jurisdiction to entertain an ac-

> tion such as is here under consideration, and thereby, as a necessary incident, it took away the jurisdiction of this court to entertain an appeal from the decree of the Circuit Court sued out after the statute went into effect, and this for the reason that the act deprives this court of the power to enforce any judgment it may render on appeal.

Under date of May 3, 1913, the Attorney General advised the Department that, in the Indian heirship case of *Harris* v. *The United States,* United States District Court, Western District of Oklahoma, the Court held that the Act of February 14, 1913 (which extended the provisions of the Act of June 25, 1910, *supra.*, to Oklahoma) divested it of any jurisdiction it may have had to determine the question involved.

It will be seen, therefore, that the Act of June 25, 1910, with its declaration that the Secretary's findings shall be final and conclusive, assures to him a judicial capacity and powers more extensive and complete, perhaps, than those exercised by courts having original or appellate jurisdiction. Even without this specific declaration by Congress and the uniform decisions indicated, the Secretary had power to look into all features of a matter coming before him for adjudication. *McKay* v. *Kalyton*, (204 U. S. 458); *U. S.* v. *Wright*, (11 Wall. 648), and other decisions are declarative of the judicial powers of an executive officer. On August 25, 1991, in *Little Bill* v. *Swanson*, (117 Pac. Rep. 481), the Supreme Court of Washington

> *Held*, in an action between an Indian claiming as heir of the original patentee to recover the land from the commissioners' grantees, that, irrespective of the adjudication of the probate court, the questions as to heirship and ownership were res judicata, since the decisions of the different departments of the United States government on questions of fact within the scope of their authority are conclusive except on appeal within the departments.

With reference to a liberal construction of statutes of adoption in order to effect their beneficent and altruistic objects, and the case of *Ferguson* v. *Herr*, (64 Neb. 663, 94 N. W. 542), cited in the decision, there does not seem to me to be sufficient similarity of facts or issues to give that case a controlling influence here. On looking into *Ferguson* v. *Herr*, I

find that the Fergusons received from the poor-master a destitute child, but failed to set out in their petition to adopt that they wished to confer upon it the *rights of heirship*. The statute itself did not make inheritance an incident of the adoption but provided for a decree "in accordance with the terms and conditions of said consent and petition." The *decree* conferred upon the child rights of heirship. Apparently the child enjoyed for years the benefits of a good home and his status as adopted child of the Fergusons was not questioned during the life of his foster parents. The main issue in the case was thus briefly stated by Commissioner Kilpatrick who delivered the opinion:

> The pivotal point, therefore, is, did the probate courts have jurisdiction to decree that the adopted child should possess the rights of a child born in lawful wedlock?

Dwelling on the primary objects of an adoption the Commissioner said:

> Adoption statutes are peculiarly beneficent and altruistic. Their purpose is wholly humane. By reason of their enactment much misery, otherwise inevitable, has been prevented; and the happiness of a most permanent and lofty character thereby engendered is practically incalculable. Childless parents have been provided with objects on which to bestow their affections, and orphans have been snugly entrenched in homes of comfort, and even luxury, brought thereby under the most valuable of influences, and, perchance, saved from swelling the ranks of the vicious and criminal * * *. As has been aptly stated: 'In cases of this kind it is not the duty of the court to bring the judicial microscope to bear upon the case, in order that every slight defect might be enlarged and magnified so that a reason might be found for declaring invalid an act consummated years before; but rather to approach the case with an inclination to uphold such acts, if it is found that there was a substantial compliance with the statute.'
>
> It is certainly to be assumed that the Fergusons knew that this decree had been entered, and knew what it provided. Throughout their lives they appear to have been perfectly satisfied therewith. This

> argues strongly in favor of the conclusion that the probate judge correctly reflected their own intentions in the decree.

An adoption by a citizen Indian can be effected, of course, only through the exercise of his personal right to go into the State court for the purpose, and any claim of this kind to heirship rights in restricted Indian lands must rest on the personal *status* thus bestowed. Ex-officio the Secretary is guardian of all Indian interests. Only on his recognition of the *status* of "child" created by adoption proceedings can an adopted child take restricted Indian property. If it be said that the responsibility declared in the several allotment acts is simply a trusteeship over the lands, and not over the individual Indian inasmuch as he becomes a citizen of the State and subject to its civil and criminal laws as soon as the trust patent issues in his name, the answer is that the courts have repeatedly held that a personal relation did continue which they define as that of guardian and ward. *U. S.* v. *Rickert*, (188 U. S. 432); *U. S.* v. *Celestins*, (215 U. S. 278). It is only through the Secretary's wise supervision over the lands and investigation into needs and acts of his ward that each individual allotment may become of practical "use and benefit" to its owner. For this reason, if he find after due inquiry into the law and the facts that an alleged adoption was in accordance with law and meritorious; that the adoptive parent and adopted child each realized appreciable benefit therefrom, or that equities arose through the adoptor's act which could not etherwise be satisfied, he is justified in overlooking minor and innocent irregularities in procedure and, if necessary, invoking the principles of morality and ethics in order to further a humane and beneficent purpose. (*Choctaw Nation* v. *United States*, 119 U. S. 1-28). In such cases only can substantial compliance become of pivotal importance. There is another feature of the decision in *Ferguson* v. *Herr* to which I desire to call attention. The probate decree in the adoption matter under consideration shows a jurisdictional defect on the face of it, in that the required number of days had not elapsed before the rendition of the decree. The Supreme Court of Nebraska in the case just alluded to, also passed upon the identical point of *proper notice under the statute*, saying:

> We doubt whether a court would, *after many years had elapsed, during which all parties appeared to have been content with the event of the proceedings*,

> hear the objection that the notice required had not been published in exact compliance with the Statute * * *.

Decided on rehearing April 9, 1903, reversing the Court's own decree of 1902 in which the District Court's decision was affirmed. (The italics are ours.)

The inference here is plain that if no *unnecessary* time had elapsed after the rendition of the decree, and *two* of the *vitally interested* parties had *opposed it continually* from the time it issued, the court would have required *strict* compliance with the Statute. In the Grace Cox adoption case prompt steps were taken to annul the decree and extreme dissatisfaction felt by the blood-related heirs as to a stranger taking the whole of an inheritance valued at approximately $20,000 by the creation of an artificial status. In this connection special attention is invited to the case of *Omaha Water Co.* v. *Schamel* (147 Fed. 507).

In the case of *Tucker* v. *Fish* (154 Mass. 574) decided in 1891, the court said:

> But for the alleged adoption, the petitioners, who were next of kin to Eliza, would have been her heirs at law. If the adoption proceedings should turn out for any reason to be invalid, they will be entitled to her estate as her heirs at law. They have, therefore, a direct pecuniary interest in the matter, like disinherited heirs in proceedings concerning their ancestor's will or heirs whose ancestor was fraudulently induced to make a conveyance of real estate. No law required that any notice should be given to them before the decree of adoption was passed. They were not parties to the proceeding, had no opportunity to be heard, and are not concluded by the decree.

The circumstances here indicated are very similar to the adoption matter now under consideration. The Court also said:

> While the primary result of adoption is, like marriage, to create a different relationship and status as to the parties immediately concerned from that which existed between them before, it may also indirectly affect, then or afterwards, the rights and interests of others; and in principle there would seem to be just as much reason that parties interested should be al-

> lowed to contest the validity of a decree of adoption, as that they should be allowed to contest the validity of a divorce and subsequent marriage by one of the divorced parties,

and it was decided that the case should stand for *hearing on the evidence.*

The last adoption case heard in the Supreme Court of Nebraska was that of *Tiffany* v. *Wright,* (79 Nebraska, page 10), May 10, 1907. It is adverted to here merely to show the attitude of the Court where *fraudulent acts were performed under color of law.* The case was heard in the District Court on an appeal from a proceeding of adoption, instituted in the County Court of Keya Paha County, Nebraska, in which Tiffany and his wife were declared and adjudged to have legally adopted an infant child, named Minnie Wright. The appeal from the order was prosecuted by the father of the child, Franklin P. Wright, under the provisions of Section 801d of the Code, and on a hearing of the cause in the District Court, the appeal was dismissed and the judgment of the County Court affirmed. To reverse this judgment Mr. Wright appealed to the Supreme Court and judgment in his favor was rendered. In concluding the Court said:

> We are strongly impressed with the view that the pretended adoption proceedings were but a collusion and fraudulent attempt on the part of the Tiffanys to deprive the appellant of the natural guardianship of his child without just cause. The specious pretense of legal guardianship of the child, under which the appellee, Mrs. Tiffany, assumed to consent to the adoption gives the entire proceedings an appearance too clearly resembling an attempted kidnapping under cloak of the law to find favor in this Court.

It is to be regretted that in the Grace Cox case the appeal from the decision of the county and district Courts was not FULLY passed upon by the Nebraska Supreme Court.

The record proves that the parties were a long distance from Pender, the seat of the county court, after three o'clock and a preponderance of the evidence shows that the contracting parties failed to appear before the court at the proper time and place for a hearing, each without restraint or coercion and mentally equal to the business before them. One witness says he saw them on the pow-wow grounds as late as five o'clock on August 13, 1902, the day on which the decree was

rendered. (See brief of the evidence herewith.) Jennie Woodhull's attorneys have had eleven years in which to establish the presence of the parties in court, knowing all the time that their opponents made that a vital issue of fact. Now, after Judge Gower and others who might have testified on this point are dead, they file three affidavits—from Jennie Woodhull, Spafford Woodhull, and Thomas L. Sloan—tending to show that they all drove to Pender that evening. Mr. Sloan says he himself left the grounds about five o'clock and drove to his home in Pender; that after he had been home some time Judge Gower sent for him; that he went to the county court where he met the other parties, and that after reading the petition and relinquishment to them, the Judge announced his order of adoption, all on the night of the 13th of August.

On page 19 of the brief of attorneys for Thomas P. Webster and Emily Walker appears the following statement:

> Our contention is that the declaration in a decree that she (Grace Cox) was present in court was a fraud upon the court. In fact, the writer of this brief knows this to be true from the statements of the County Judge who died some time after these proceedings and before the matter came to trial.
>
> This writer made inquiry of the County Judge in reference to Grace Cox being in Court on the day in question and he replied that she was not in court in Pender but that he saw her on the pow-wow ground. This statement, the writer of this brief, Harry L. Keefe, makes professionally and as a statement under oath.

Woodhull heretofore testified that Mr. Sloan got Grace Cox to adopt Jennie; and that Mr. Sloan afterwards got him and Jennie to sign a contract for *fifty per cent* of the value of whatever property might be procured for her under the adoption proceedings; that they signed this paper first, and afterwards it was explained to them by Mr. Sloan, and that they accepted the contract. It is shown also that Mr. Sloan was to employ an "Omaha lawyer" to fight the case. A Mr. Summers afterwards filed a brief in behalf of Jennie Woodhull in the United States Court. Mr. Sloan's name does not appear on that brief. Mr. Sloan also had a power of attorney from Emily Walker, the half-sister of Grace Cox, and a claimant in opposition to the adoption decree, to defend *her* interests for *one-half or fifty per cent* of any lease funds accrued to

her, or which might accrue from the lands in litigation. Mr. Keefe's statement in the record is to the effect that Mr. Sloan assigned the contract with Jennie Woodhull to Mr. Summers and retained an interest therein.

The conclusion is forced upon me by the evidence that the court proceedings were irregular and that the adoption idea did not originate with Grace Cox; that she did not initiate the court proceedings with any understanding of their import; that she was without advice from any other source than those who were to profit by the adoption direct or indirectly; that she was not capable or fitted in any way to assume a mother's responsibility toward any child. Moreover, her afflictions made it undesirable to bring a child in close contact with her. Jennie Woodhull had a good home. She needed no other and Grace Cox had none to offer. The parents in fact never relinquished their control over her. None of the beneficent incidents of an adoption were realized during the life of Grace Cox, and there are good reasons for believing that they could never have been realized. There was, therefore, no consideration of justice, expediency or equity to be served by the adoption, or by recognition now of the relations declared in the decree.

Grace Cox's estate could easily bear the expense of her care and maintenance during her illness. If no bill therefor was submitted and settled during the administration of her estate in 1905 an itemized account covering all legitimate charges for sustenance and nursing should now be submitted. Claims for reasonable expenditures of this nature receive favorable consideration in this Office and are paid out of rentals or other funds remaining to the credit of the estate.

I have gone into this matter at some length because there is a vital principle in the administration of Indian estates involved, and title to an estate valued at approximately $20,000 depends upon the conclusion to be reached. My review of the case reveals to me the need for just such authorization as Congress has given in the act of June 25, 1910, and for a liberal construction of his powers under that act in order that out adjudications, while conforming to legal principles and decisions, may not be void of equity or give effect to fraudulent or pernicious purposes.

Grace Cox was possessed at her death of her own allotment and a one-third interest in the allotments of her father, Luther

Cox; her brother, Ou-ba-ne Cox; and her brother, Walter Cox, the last named being subject to a life interest in the allottee's wife, Maggie Cox (now Dick). She died unmarried and without issue, survived by her nephew, Thomas P. Webster, and her half-sister, Emily Walker, her nearest kind who, in my opinion, should be held to be her sole heirs under the laws of descent of Nebraska, entitled to share equally in all her property, real and personal; and as such heirs entitled also to all rentals or other moneys accrued therefrom; all as contained in the recommendation in Indian Office letter of March 1, 1913.

The decision of the Department of May 8, 1913, as it appears to me, rests entirely on untenable grounds. It is at variance with long established principles of the Secretary's authority in Indian matters, and in addition to effectuating, in this instance, a questionable transaction, would, if sustained, materially limit the Secretary's powers under the Act of June 25, 1910; and interfere with a consistent and strictly upright administration of Indian estates. I therefore recommend that it be vacated; that the doctrine of complete jurisdiction in the Secretary herein indicated, be adhered to; that the alleged status of adoptive parent and adopted child, as between Grace Cox and Jennie Woodhull, be not recognized; and that the old heirs to the restricted estates of Grace Cox, Luther Cox, Ou-ba-ne Cox, and Walter Cox and their respective shares in each estate be declared as follows:

LUTHER COX:

Thomas P. Webster, grandson,	½
Emily Walker, daughter,	½

OUBANE COX:

Thomas P. Webster, grandson of father	½
Emily Walker, daughter of father,	½

WALTER COX:

Thomas P. Webster, grandson of father,	½
Emily Walker, daughter of father subject to an estate for life in Maggie Cox (now Dick) surviving wife.	½

GRACE COX:

Thomas P. Webster, nephew,	½
Emily Walker, half-sister,	½

Yous very truly,

Sd. CATO SELLS,
Commissioner.

Hon. A. A. Jones,
First Asst. Secretary,
Department of the Interior.

Department of the Interior.
Sep. 26, 1913.

The decision of the Department of May 8, 1913, in the inheritance cases of Grace Cox, Luther Cox, Ou-ba-ne Cox, and Walter Cox, deceased Omaha Indians, of Nebraska, is hereby vacated.

The recommendations of the Commissioner of Indian Affairs of Sep. 19, 1915, are hereby approved; and I find that the sole heirs to each estate and their respective shares therein under the laws of descent of Nebraska, are as follows:

LUTHER COX:
Thomas P. Webster, grandson, ½
Emily Walker, daughter, ½

OUBANE COX:
Thomas P. Webster, grandson of father, ½
Emily Walker, daughter of father, ½

WALTER COX:
Thomas P. Webster, grandson of father, ½
Emily Walker, daughter of father, ½
subject to an estate for life in Maggie Cox (now Dick) surviving wife.

GRACE COX:
Thomas P. Webster, nephew, ½
Emily Walker, half-sister, ½

"A. A. JONES"
First Assistant Secretary.

INDEX.

	Page.
STATEMENT OF THE CASE	1–2
THE STATUTES	2–4
THE FACTS	4–7
SPECIFICATIONS OF ERROR	7–8
ARGUMENT	8–31
I. Since the United States, the real party defendant, has not consented to be sued in this cause, it should be dismissed for want of jurisdiction	8–12
The United States is the real party defendant	8
Naganab v. *Hitchcock*, 202 U. S. 473.	
Oregon v. *Hitchcock*, 202 U. S. 60.	
The immunity of the United States from suit is not waived by failure to present the point in the lower court	11
Carr v. *United States*, 98 U. S. 433, 438.	
Stanley v. *Schwalby*, 162 U. S. 255, 270.	
II. Prior to conveyance of legal title to the heirs of the Indian allottee the Secretary of the Interior has jurisdiction to reconsider a determination of heirship	12–25
The statutory direction that the Secretary's decision shall be "final and conclusive" is addressed to the courts	13
Hallowell v. *Commons*, 239 U. S. 506.	
Pearson v. *Williams*, 202 U. S. 281.	
The decided cases settle the general rule	15
Brown v. *Hitchcock*, 173 U. S. 473.	
Knight v. *Lane*, 228 U. S. 6.	
In this case the legal title beyond all doubt remains in the United States	22
United States v. *Rickert*, 188 U. S. 432.	

Page.

III. The judgment of the Secretary can not be controlled by mandamus 26–27

The petition was premature 27

IV. The order for rehearing was not arbitrary, but within the exercise of reasonable discretion 27–31

Jaster v. *Currie*, 69 Nebr. 4.

Tucker v. *Fisk*, 154 Mass. 574.

CONCLUSION 31

CASES CITED.

	Page.
Abercrombie v. *Abercrombie*, 64 Kans. 29	30
Adams v. *Bradley*, Fed. Cas. 48	11
Ballinger v. *Frost*, 216 U. S. 240	15, 17
Beley v. *Naphtaly*, 169 U. S. 353, 364	13
Bergen, Re Lizzie, 30 Land Dec. 258	22
Bowling v. *United States*, 233 U. S. 528, 534	9
Brown v. *Hitchcock*, 173 U. S. 473	20
Carr v. *United States*, 98 U. S. 433, 438	11
Case v. *Terrell*, 11 Wall. 199, 202	11
Christmas v. *Russell*, 5 Wall. 290, 303	29
Conley v. *Ballinger*, 216 U. S. 84, 90, 91	10
Daniels v. *Wagner*, 237 U. S. 547, 562, et seq	22
Dunlap v. *Cody*, 31 Iowa 260	30
Frawley v. *Pa. Casualty Co.*, 124 Fed. 259, 267	30
Hallowell v. *Commons*, 239 U. S. 506	5, 9, 14, 26, 31
Hallowell v. *United States*, 221 U. S. 317	23
Hawley v. *Diller*, 178 U. S. 476, 490	22
Heckman v. *United States*, 224 U. S. 413	9
Jaster v. *Currie*, 69 Nebr. 4; 198 U. S. 144	30
Keeler v. *Elston*, 22 Nebr. 310	30
Knight v. *Lane*, 228 U. S. 6	20
Lane v. *Watts*, 234 U. S. 525	15
Lowe v. *Fisher*, 223 U. S. 95, 107	22, 28
Marx v. *Fore*, 51 Mo. 69	30
McKay v. *Kalyton*, 204 U. S. 458	9, 24
Michigan Land and Lumber Co. v. *Rust*, 168 U. S. 589	24
Minnesota v. *Hitchcock*, 185 U. S. 373	11
Monson v. *Simonson*, 231 U. S. 341, 345	24
Mullen v. *United States*, 224 U. S. 448, 451	9

	Page.
Naganab v. *Hitchcock*, 202 U. S. 473	11
Ness v. *Fisher*, 223 U. S. 683, 693	26
New Orleans v. *Paine*, 147 U. S. 261	18, 20
Noble v. *Union River Logging Railroad*, 147 U. S. 165	15, 17, 18
Oregon v. *Hitchcock*, 202 U. S. 60	10, 26
Pearson v. *Williams*, 202 U. S. 281, 285	14
People of Porto Rico v. *Rosaly*, 227 U. S. 270	12
Plested v. *Abbey*, 228 U. S. 42, 51	22
Stanley v. *Schwalby*, 162 U. S. 255, 270	12
Tucker v. *Fisk*, 154 Mass. 574	29
United States v. *Lee*, 106 U. S. 196, 205	11, 12
United States v. *Noble*, 237 U. S. 74, 80	9
United States v. *Pelican*, 232 U. S. 442, 447	24
United States v. *Rickert*, 188 U. S. 432	23, 24
United States v. *Stone*, 2 Wall. 525	18
Wood v. *Wood*, 78 Ky. 624	30

In the Supreme Court of the United States.

OCTOBER TERM, 1915.

FRANKLIN K. LANE, SECRETARY OF THE INTERIOR, PLAINTIFF IN ERROR, *v.* THE UNITED STATES OF AMERICA EX RELATIONE JULIA LAMERE MICKADIET, NEE TIEBAULT, AND ALMA LAMERE TIEBAULT.	No. 449.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

In this case is presented the question as to the power of the Secretary of the Interior to review and upon rehearing vacate a decision of his predecessor declaring certain persons to be the heirs of an allottee of Indian lands. Relators inaugurated the proceeding by filing a petition for mandamus to compel the Secretary of the Interior to carry out a decision of his predecessor declaring them to be the

heirs of My Soul Tiebault, and as such entitled to the usufruct and ultimate title of Tiebault's allotment. The Secretary made answer to the rule to show cause. A general demurrer to the answer was overruled by the Supreme Court of the District of Columbia, but on appeal to the Court of Appeals of the District of Columbia that court directed that mandamus issue. 43 App. D. C. 414; 43 W. L. R. 242. The case comes here on writ of error. Judicial Code of 1911, sec. 250, act of March 3, 1911, c. 231, 36 Stat. 1087, 1159.

THE STATUTES.

The statutory provisions involved are as follows:

Act of February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations," c. 119, sec. 5, 24 Stat. 388, 389:

> That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the lands thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, to his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of such period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee,

discharged of said trust and free of all charge or incumbrance whatsoever: *Provided*, That the President of the United States may in any case in his discretion extend the period.

Act of May 8, 1906, c. 2348, 34 Stat. 182:

That section 6 of an act approved February eighth, eighteen hundred and eighty-seven, entitled "An Act to provide for the allotment of lands * * *" be amended to read as follows:

"SEC. 6. * * * That the Secretary of the Interior may, in his discretion, and he is hereby authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple * * *."

That hereafter when an allotment of land is made to any Indian, and any such Indian dies before the expiration of the trust period, said allotment shall be cancelled and the land shall revert to the United States, and the Secretary of the Interior shall ascertain the legal heirs of such Indian, and shall cause to be issued to said heirs and in their names, a patent in fee simple for said land, or he may cause the land to be sold as provided by law and issue a patent therefor to the purchaser or purchasers, and pay the net proceeds to the heirs, or their legal representatives, of such deceased Indian. The action of the Secretary of the Interior in determining the legal heirs of any deceased Indian, as provided herein, shall in all respects be conclusive and final.

Act of June 25, 1910, c. 431, sec. 1, 36 Stat. 855:

> * * * That when any Indian to whom an allotment of land has been made, or may hereafter be made, dies before the expiration of the trust period and before the issuance of a fee-simple patent, without having made a will disposing of said allotment as hereinafter provided, the Secretary of the Interior, upon notice and hearing, under such rules as he may prescribe, shall ascertain the legal heirs of such decedent, and his decision thereon shall be final and conclusive. If the Secretary of the Interior decides the heir or heirs of such decedent competent to manage their own affairs, he shall issue to such heir or heirs a patent in fee for the allotment of such decedent; if he shall decide one or more of the heirs to be incompetent, he may, in his discretion, cause such lands to be sold, etc.

THE FACTS.

My Soul Tiebault was a member of the Winnebago Tribe of Indians and a holder of an allotment evidenced by trust patent under the act of 1887. He died in February, 1906. The relators claim that they were regularly adopted as his children in the county court of Thurston County, Nebraska, in October, 1896, and were adjudged by the Secretary of the Interior on January 11, 1913, to be the legal heirs of Tiebault. Proceedings to settle the heirship of relators had been begun by them in the Federal court in Nebraska, but were transferred to the Secretary of the Interior after the act of June 25,

1910, vested in him sole authority to determine the question. *Hallowell* v. *Commons*, 239 U. S. 506. In September, 1913, the 25-year trust period not having elapsed, the relators petitioned the Secretary of the Interior to issue them patents in fee simple under the acts of May 8, 1906, and June 25, 1910, *supra* (R. 15). One Harrison Tiebault on October 8, 1913, protested against the issuance of such patent in fee simple, and filed a motion for a review and reconsideration of the decision of January 11, 1913, on the ground of "newly discovered evidence tending to show that the alleged decree of adoption was void on the ground that it was secured by fraud" (R. 15–16). Notice of the motion was duly transmitted to the relators, who challenged the jurisdiction of the Secretary of the Interior to review the prior decision of January 11, 1913. Briefs and arguments were filed, full hearing had on the sole question of jurisdiction to rehear, and on June 6, 1914, "the Secretary rendered a decision overruling the plea to his jurisdiction to reconsider the action of January 11, 1913, but withholding any decision on other points or consideration thereof until after due notice to the parties of his ruling on the preliminary question of jurisdiction and his authority to entertain the motion for reconsideration" (R. 16). Without waiting for the Secretary's decision on the merits relators filed their petition for mandamus on July 14, 1914, seeking to compel the Secretary to carry out the decision of his predecessor of January 11,

1913, on the ground that he lacked jurisdiction to reconsider (R. 1 *et seq.*). The facts as above set forth appear from the petition and the return to the rule to show cause, and are taken as true on the general demurrer to the return. An incidental question as to the right of the Secretary to withhold accruing rents and profits pending the rehearing is clearly dependent upon the question of jurisdiction to readjudicate the heirship.

The Court of Appeals held that "the Secretary, under the facts stated, exceeded his powers in attempting to readjudicate the question as to who are the legal heirs of My Soul Tiebault," and that the cause should be remanded "for an order directing the Secretary to recognize and enforce the departmental decision of January 11, 1913" (R. 25). The ground of the holding seems to be that the statute under which the Secretary acted declared that his decision should be "final and conclusive."

The court said (R. 24–25):

> But apart from the question of the conclusiveness of the decree of adoption we think the Secretary, under the facts stated, was without jurisdiction to reopen the decision of January 11, 1913. There is no averment or pretence that such decision was procured by fraud. The attack is upon a decree of adoption regularly entered by a court of competent jurisdiction in the State of Nebraska. The statute under which the Secretary is acting in terms declares that the decision of the department identifying the heirs of a deceased

allottee shall be final and conclusive. No rule of the department providing for a rehearing within a stated time, promulgated under the authority of the act of June 25, 1910, has been called to our attention. In Knight *v.* Lane, 228 U. S. 6, 10, it was held that a decision of the Secretary of the Interior revoking his prior approval of an adjustment between contestants, one of whom was a minor, and which was not arbitrary or capricious, but given after a hearing and in the exercise of the discretion confided to him by law, could not be reviewed by the courts. But there the application for rehearing was made within the thirty days within which such an application could be filed under the rules of the department, and there was no provision of the statute that the original decision, when rendered, should be final and conclusive. Here the department regularly having determined the identity of the legal heirs of the deceased allottee its decision was final and no more subject to review than would have been a similar decision of a judicial tribunal. United States *v.* Stone, 2 Wall. 525; Noble *v.* Union River Logging Co., 147 U. S. 165; Lane *v.* Watts, 234 U. S. 525, 540.

SPECIFICATIONS OF ERROR.

The fourth assignment of error is as follows (R. 28):

> The court erred in not holding and deciding that the appellee, as Secretary of the Interior, had full jurisdiction and power, and that it was his duty under the facts set forth in the decision of said court and shown in the record

to reopen, reconsider, and readjudicate the question as to who are the legal heirs of said My Soul Tiebault.

The ninth assignment of error is as follows (R. 28):

> The court erred in holding and construing said act of June 25, 1910, to mean that a decision of the Secretary of the Interior as to who are the heirs of a deceased Indian allottee is final and conclusive upon him and that he is without power to reconsider and correct the same while the legal title to the land involved is yet in the United States.

These assignments of error raise the main questions at issue in this court. There is, however, a preliminary question of jurisdiction to be considered.

ARGUMENT.

I.

Since the United States, the real party defendant, has not consented to be sued in this cause, it should be dismissed for want of jurisdiction.

The United States is the real party defendant.

The relators bring this suit as *cestuis que trust* to compel the administration of a trust estate for their benefit. Franklin K. Lane, Secretary of the Interior, respondent below, quite obviously has no personal interest in this suit. He merely represents the United States, which holds the legal title. Although the United States purports to hold the allotment in trust for the sole use and benefit of the allottee, his interest is hedged about with so many restrictions that the term "trust" is misleading. The United States, moreover, is not merely the holder of the bare

legal title. Its interests are substantial. It holds the land as guardian for a dependent people, seeking to carry out a carefully planned legislative policy with reference to them. The land, so long as the United States holds the legal title, is in the process of administration in pursuance of this legislative policy. Thus, it is now settled that to carry out the legislative policy "where Congress has imposed restrictions upon the alienation of an allotment, the United States has capacity to sue for the purpose of setting aside conveyances or contracts by which these restrictions have been transgressed. *Heckman* v. *United States*, 224 U. S. 413; *Mullen* v. *United States*, 224 U. S. 448, 451; *Bowling* v. *United States*, 233 U. S. 528, 534." *United States* v. *Noble*, 237 U. S. 74, 80. In *McKay* v. *Kalyton*, 204 U. S. 458, where it was held that a State court had no jurisdiction to determine questions of title to allotted lands, the court said (p. 466):

> The supervisory power possessed by the United States over allotted lands while the title remains in the United States was pointed out in the opinion in *United States* v. *Rickert*. (p. 469) * * * Nothing could more clearly demonstrate, than does this requirement, [that the United States be party defendant to suits authorized to be brought in the Circuit Courts respecting allotments of Indian lands*] the conception of Congress that the

* All authority of the courts to determine the heirs of a decedent allottee was taken away by Congress by the act of June 25, 1910, *supra*. *Hallowell* v. *Commons*, 239 U. S. 506.

> United States continued as trustee to have an active interest in the proper disposition of allotted Indian lands and the necessity of its being made a party to controversies concerning the same, for the purpose of securing a harmonious and uniform operation of the legislation of Congress on the subject.

The substantial interest of the United States appears in another aspect. Congress has the power to cancel the present allotment for irrigation or other purposes (sec. 14, act of June 25, 1910, *supra*), substituting, of course, pursuant to the dictates of honor, allotments of equal value. If there is any interest adverse to the relators belonging to Harrison Tiebault, he would be affected by the judgment, and since not made a party, the suit should not be determined. See *Oregon* v. *Hitchcock*, 202 U. S. 60, 69. On the other hand, if there be no interest adverse to relators, and relators' claim is invalid, the substantial interest of the United States only the more clearly appears.

Under these circumstances, it is submitted that no court can enforce the trust against the United States. *Conley* v. *Ballinger*, 216 U. S. 84, 90, 91. In *Oregon* v. *Hitchcock*, 202 U. S. 60, a bill was filed against the Secretary of the Interior to restrain the allotment or patenting to any Indians of certain land within the Klamath Reservation alleged to be swamp and overflowed lands, and to obtain a decree establishing the title of the petitioner. The case was dismissed for want of jurisdiction, one of the grounds being that the

United States, holding the legal title, was the real party defendant and had not consented to be sued. The case was followed in *Naganab* v. *Hitchcock*, 202 U. S. 473, where a member of the Chippewa Tribe sought to compel the administration of a trust in certain lands in favor of the Indians and an accounting. The court said (p. 476):

> In this case, as in the *Oregon* case, the legal title to all the tracts of land in question is still in the Government, and the United States, the real party in interest herein, has not waived in any manner its immunity, or consented to be sued concerning the lands in question, and there is no act of Congress in anywise authorizing this action.

The immunity of the United States from suit is not waived by failure to present the point in the lower court.

Only the legislature may waive the immunity of the sovereign from suit. The legislative consent is the basis of suits against the Government in the Court of Claims. It is explicitly stated to be the reason why the court entertained the suit in *Minnesota* v. *Hitchcock*, 185 U. S. 373. An unauthorized attorney clearly can not bind the United States by entering appearance or by litigating the merits. The Attorney General has power to represent the United States as party defendant only in those suits as to which Congress has expressly given authorization. *Adams* v. *Bradley*, Fed. Cas., No. 48; *Case* v. *Terrell*, 11 Wall. 199, 202; *Carr* v. *United States*, 98 U. S. 433, 438; *United States* v. *Lee*, 106 U. S. 196, 205;

Stanley v. *Schwalby*, 162 U. S. 255, 270; *People of Porto Rico* v. *Rosaly*, 227 U. S. 270.

In *United States* v. *Lee*, *supra*, the court said (p. 205):

> There is vested in no officer or body the authority to consent that the State shall be sued except in the law-making power, which may give such consent on the terms it may choose to impose.

In *People of Porto Rico* v. *Rosaly*, *supra*, the record shows that no question of jurisdiction was raised in the trial court; nevertheless, this court held that the suit against Porto Rico should be dismissed for want of jurisdiction.

By the act of June 25, 1910, *supra*, Congress declared the legislative policy that the subject matter of this suit should not be justiciable by the courts. Manifestly no executive officer by simply consenting to suit should have power to thwart the congressional will thus clearly expressed.

II.

Prior to conveyance of legal title to the heirs of the Indian allottee the Secretary of the Interior has jurisdiction to reconsider a determination of heirship.

The act of June 25, 1910, provides that—

> the Secretary of the Interior * * * shall ascertain the legal heirs of such decedent, and his decision thereon shall be final and conclusive. If the Secretary of the Interior de-

> cides the heir or heirs of such decedent competent to manage their own affairs, he shall issue to such heir or heirs a patent in fee for the allotment of such decedent.

Under this statute relators were petitioning that a patent in fee be issued to them. The statute plainly gives jurisdiction to the Secretary of the Interior to ascertain the legal heirs of My Soul Tiebault in order that the legal title be vested in the proper persons. Any conclusion as to heirship announced prior to the issuance of patent in fee is purely interlocutory and may be reexamined at any time provided the fundamental rules of notice and fair hearing are observed. The final determination of heirship, it would seem on a simple reading of the statute, is the issuing of patent in fee divesting the legal title of the Government; and until that time the jurisdiction of the Secretary of the Interior continues.

The statutory direction that the Secretary's decision shall be "final and conclusive" is addressed to the courts.

The statutory injunction that the Secretary's decision shall be "final and conclusive" is addressed not to Secretaries of the Interior subsequent to the particular Secretary who first considers the question, but to other persons or tribunals. It matters not that the person of the Secretary of the Interior may change. The office continues the same. *Beley* v. *Naphtaly*, 169 U. S. 353, 364. The language that the decision of the Secretary of the Interior shall be "final and conclusive" is directed especially to the

courts. So, it was held in *Hallowell* v. *Commons*, 239 U. S. 506, that the courts have no jurisdiction to decide questions of heirship of a similar trust interest of an Indian allottee, such jurisdiction by the act of June 25, 1910, c. 431, 36 Stat. 855, having been vested exclusively in the Secretary of the Interior. As was said by this court in *Pearson* v. *Williams*, 202 U. S. 281, 285, a similar statutory declaration that the finding of the immigration authorities as to the admissibility of aliens shall be "final" is addressed particularly to noninterference by the courts. In that case certain aliens had been permitted to land after a hearing before the board of special inquiry, the decision of which the act declared to be final. Thereafter the Secretary of Commerce and Labor directed a rehearing. The court said (p. 282):

> The only question is whether the Secretary had the right to direct the second hearing and to make the order of deportation * * *.
>
> (p. 283) * * * In this case the first decision of the board was unanimous, and the petitioners contend that it was final by the very words of the act.
>
> (p. 284) * * * The board is an instrument of the executive power, not a court.
>
> (p. 285) * * * Decisions of a similar type long have been recognized as decisions of the executive department, and can not constitute *res judicata* in a technical sense.
>
> * * * There can be no doubt, we think, that the provision of the act of 1891 referred to the courts.

If the usual rule be that until the United States is divested of legal title the Secretary may grant rehearing on questions of heirship, there is nothing in the statutes in this case to call for the application of a different principle.

The decided cases settle the general rule.

The line marking the jurisdiction of the Secretary of the Interior has often been drawn. Repeated adjudications by this court have followed the rule that so long as the legal title to public land remains in the United States the Secretary of the Interior has the power and the duty to consider all the legal and equitable considerations which should control his ultimate adjudication of the proper claimants by issuance of patent in fee simple. Any decision prior to a divesting of the legal title of the United States must be interlocutory. The "term of court" of the Secretary, so far as concerns the time within which a motion for new trial upon a decision as to heirship must be preferred, continues until the legal title is transferred.

There is nothing to the contrary in such leading cases as *Noble* v. *Union River Logging Railroad*, 147 U. S. 165; *Ballinger* v. *Frost*, 216 U. S. 240; and *Lane* v. *Watts*, 234 U. S. 525. In the last case the Secretary of the Interior was enjoined from proceeding with a rehearing and directing a resurvey of certain lands. The statute provided that the title to the land should vest in certain heirs of Baca upon survey by the surveyor general of New Mexico. In April,

1864, this survey was made and approved. In 1907 the Department of the Interior, despite the prior vesting of legal title in claimants, was attempting to proceed with a new survey. The court clearly indicated that the decision of the case depended upon whether legal title passed from the United States. Justice McKenna, delivering the opinion of the court, said (p. 538):

> The crux of the case in the views of the courts below is the question whether title to the lands passed out of the United States in April, 1864, and the careful and elaborate consideration of it makes the discussion of it mere repetition.
>
> (pp. 538–539) * * * The appellees insist, and the courts below, as we have seen, decided, that the location of the grant and the approval of it by the surveyor general of New Mexico and subsequently in April, 1864, by Commissioner Edmunds of the Land Office transferred the title to the heirs of Baca.
>
> * * * The selection and location was to be made within three years of the passage of the act in a comparative wilderness and the "title was then to pass," and "pass absolutely, and not contingently upon subsequent discoveries."
>
> (p. 540) The title having passed by the location of the grant and the approval of it, the title could not be subsequently divested by the officers of the Land Department. *Ballinger* v. *United States ex rel. Frost*, 216 U. S. 240. In other words, and specifically, the action of the Commissioner in approving the location of the

grant cannot be revoked by his successor in office, and an attempt to do so can be enjoined. *Noble* v. *Union River Logging R. Co.*, 147 U. S. 165; *Philadelphia Company* v. *Stimson*, 223 U. S. 605.

In *Ballinger* v. *Frost*, 216 U. S. 240, a mandamus to compel the Secretary of the Interior to deliver a patent to a tract of land was granted. A certificate of allotment had been delivered to the relator, and the chief of the Choctaw Nation and the governor of the Chickasaw Nation jointly executed a patent to the relator conveying the title of these nations by virtue of the Federal statutes. A further Federal statute provided that the allotment certificate issued by the Commissioner of the Five Civilized Tribes should be conclusive evidence of the right of any allottee to the tract of land described. A nine months' period was allowed for contest of allotment selections. The court held that the title of the allottee had become fixed and absolute after the nine months' period of contest had expired and the chiefs of the Choctaw and Chickasaw Nations had executed their patent, and that the Secretary of the Interior, under the statutes involved, had simply the ministerial duty of seeing that the patent was duly executed and delivered.

In the *Union River Logging Railroad Company* case, *supra*, relied on by the court below, the statute provided that title to certain lands should vest in railways upon the approval of maps by the Secretary of the Interior. The maps were approved, and sub-

sequently the Secretary of the Interior attempted to revoke his approval. This court enjoined such attempted revocation and plainly put its decision on the ground that title had passed from the Government. On page 176 the court said:

> "With the title passes away all authority or control of the executive department over the land, and over the title which it has conveyed. * * * The functions of that department necessarily cease when the title has passed from the Government."
>
> * * * The language of that section is "that the right of way through the public lands of the United States is hereby granted to any railroad company duly organized under the laws of any State or Territory." * * * It was said in this case by Mr. Justice Miller [referring to the case of *United States* v. *Schurz*, 102 U. S. 378, 402]: "Whenever this takes place" (that is, when a patent is duly executed) "the land has ceased to be the land of the Government, or, to speak in technical language, title has passed from the Government, and the power of these officers to deal with it has also passed away."

United States v. *Stone*, 2 Wall. 525, is to the same effect.

The extent to which the *Union River Logging Company* case goes is more plainly indicated in a subsequent case decided at the same term. *New Orleans* v. *Paine*, 147 U. S. 261. In that case, where title had not passed from the Government, an injunction

to restrain the surveyor general of the United States from resurveying and relocating a new boundary of a French grant was denied. Mr. Justice Brown, who delivered the opinion in the *Union River Logging Railroad* case, said (p. 264):

> This case turns upon the power of the court to enjoin the action of an officer of the Land Department in relocating the boundaries of a land grant; * * *.
>
> In *Noble* v. *Union River Logging Railroad*, decided at the present term (*ante* 165), we had occasion to examine the question as to when a court was authorized to interfere by injunction with the action of the Head of a Department, and came to the conclusion that it was only where, in any view of the facts that could be taken, such action was beyond the scope of his authority.
>
> (p. 266) It is quite evident from this correspondence that the first survey was never formally approved by the Secretary of the Interior or the Commissioner of the Land Office, and that no title ever vested in the plaintiff to the lands included in this survey * * *. If the department was not satisfied with this survey, there was no rule of law standing in the way of its ordering another. Until the matter is closed by final action, the proceedings of an officer of a department are as much open to review or reversal by himself, or his successor, as are the interlocutory decrees of a court open to review upon the final hearing. *Fourniquet* v. *Perkins*, 16 How. 82.

A case similar to *New Orleans* v. *Paine*, and conclusive of the case at bar, is *Brown* v. *Hitchcock*, 173 U. S. 473. This was a bill in equity to compel the Secretary of the Interior to carry out an order of his predecessor adjudging certain lands in list 5 to be swamp land, and to compel the annulment of the then Secretary's order canceling the selection. The court held that the petitioner was entitled to no relief because (p. 476) "under the Swamp Land Act the legal title passes only on delivery of the patent. So the statute in terms declares." The court said (p. 476):

> Until the legal title to public land passes from the Government, inquiry as to all equitable rights comes within the cognizance of the land department.

And on page 477:

> * * * As a general rule, no mere matter of administration in the various executive departments of the Government can, pending such administration, be taken away from such departments and carried into the courts.

The case of *Brown* v. *Hitchcock* was followed in *Knight* v. *Lane*, 228 U. S. 6. There mandamus to compel the Secretary of the Interior to follow a former decision approving certain claims to Indian land was again refused. The specific question in the case related to the power and jurisdiction of the Secretary of the Interior to reconsider the claims, a formal approval having theretofore been given. Citing *Brown* v. *Hitchcock*, the court says (p. 12):

> "Until the legal title to public land passes from the Government, inquiry as to all equitable rights comes within the cognizance of the land department. * * *"

And continuing (p. 13):

> "But what we do affirm and reiterate is that power is vested in the Departments to determine all questions of equitable right or title, upon proper notice to the parties interested, and that the courts must, as a general rule, be resorted to only when the legal title has passed from the Government."

As entirely apposite, we repeat the statement in *New Orleans* v. *Paine*, 147 U. S. 261, 266: "Until the matter is closed by final action, the proceedings of an officer of a department are as much open to review or reversal by himself, or his successor, as are the interlocutory decrees of a court open to review upon the final hearing."

Inasmuch as the decision of the Secretary revoking the prior approval of the proposed adjustment was not arbitrary or capricious, but was given after a hearing and in the exercise of a judgment and discretion confided to him by law, it can not be reviewed, or he be compelled to retract it, by mandamus. *Ness* v. *Fisher*, 223 U. S. 683.

It is true that in *Knight* v. *Lane* a departmental regulation provided for rehearing. But the citations in the opinion of the court, which distinguished *Ballinger* v. *Frost*, *supra*, show clearly that the decision of the court did not go on this narrow ground.

See also *Re Lizzie Bergen*, 30 Land Dec. 258; *Daniels* v. *Wagner*, 237 U. S. 547, 562, *et seq.*; *Hawley* v. *Diller*, 178 U. S. 476, 490; *Lowe* v. *Fisher*, 223 U. S. 95, 107; *Plested* v. *Abbey*, 228 U. S. 42, 51.

In this case the legal title beyond all doubt remains in the United States.

The very object of the proceeding before the Secretary of the Interior was to obtain a declaration of heirship in favor of the relators by the Secretary of the Interior, in order that patent in fee simple might be issued vesting legal title in them.

The use of the word "patents" in the act of February 8, 1887, in describing the certificate under which the Indian allottee holds his trust interest, can cast no doubt upon the real nature of the allottee's interest. The United States retains full legal title and control over the allotted lands during the trust period, and the Indian allottee remains under the general guardianship of the Secretary as a ward of the Nation. The act of May 8, 1906, *supra*, provided expressly "that until the issuance of fee simple patents all allottees to whom trust patents shall hereafter be issued shall be subject to the exclusive jurisdiction of the United States." 34 Stat. 183. The original allotment act provided that the trust period might be indefinitely extended by the President, *supra*, p. 3. The act of June 25, 1910, prohibits the cutting of timber on allotted lands while the title to the same is held in trust by the Government. Sec. 6, 36 Stat. 857. Section 14 authorizes the Secretary of the

Interior to cancel trust patents issued to Indian allottees for allotments within any power or reservoir site, and for allotments located upon lands set aside for irrigation purposes. The allotment may be leased only as the Secretary of the Interior approves, and the payment or expenditure of the proceeds from the lease is at the discretion of the Secretary. Sec. 4, act of June 25, 1910, 36 Stat. 856. Congress may prohibit the introduction of liquor by an allottee on his own allotment. *Hallowell* v. *United States*, 221 U. S. 317. As was said by this court in *United States* v. *Rickert*, 188 U. S. 432, in which it was held that the allotments under the act of February 8, 1887, were not subject to State taxation (p. 436):

> The word "patents," where it is first used in this section, was not happily chosen to express the thought which, it is clear, all parts of the section being considered, Congress intended to express. The "patents" here referred to (although that word has various meanings) were, as the statute plainly imports, nothing more than instruments or memoranda in writing * * *. In other words, the United States retained the legal title, giving the Indian allottee a paper or writing, improperly called a patent, showing that at a particular time in the future, unless it was extended by the President, he would be entitled to a regular patent conveying the fee.
>
> (p. 437) If, as is undoubtedly the case, these lands are held by the United States in execution of its plans relating to the Indians—

> without any right in the Indians to make contracts in reference to them or to do more than to occupy and cultivate them—until a regular patent conveying the fee was issued to the several allottees, it would follow that there was no power in the State of South Dakota, for state or municipal purposes, to assess and tax the lands in question until at least the fee was conveyed to the Indians. These Indians are yet wards of the Nation, in a condition of pupilage or dependency, and have not been discharged from that condition. They occupy these lands with the consent and authority of the United States; and the holding of them by the United States under the act of 1887, and the agreement of 1889, ratified by the act of 1891, is part of the national policy by which the Indians are to be maintained as well as prepared for assuming the habits of civilized life, and ultimately the privileges of citizenship.

The *Rickert* case is followed with approval in *McKay* v. *Kalyton*, 204 U. S. 458. See also *Monson* v. *Simonson*, 231 U. S. 341, 345; *United States* v. *Pelican*, 232 U. S. 442, 447.

The policy which should govern the present case is clear. As was said in *Michigan Land and Lumber Co.* v. *Rust*, 168 U. S. 589, where the Secretary of the Interior was held to have power to make a readjudication as to the character of certain lands alleged to be swamp lands until the divesting of legal title of the Government (p. 593):

> It is, of course, not pretended that when an equitable title has passed the land department

has power to arbitrarily destroy that equitable title. It has jurisdiction, however, after proper notice to the party claiming such equitable title, and upon a hearing, to determine the question whether or not such title has passed. *Cornelius* v. *Kessel*, 128 U. S. 456; *Orchard* v. *Alexander*, 157 U. S. 372, 383; *Parsons* v. *Venzke*, 164 U. S. 89. In other words, the power of the department to inquire into the extent and validity of the rights claimed against the Government does not cease until the legal title has passed.

In *Knight* v. *United States Land Association*, 142 U. S. 161, is a full discussion by Mr. Justice Lamar of the power of the Secretary of the Interior over proceedings in respect to the disposition of public lands, and on page 178 it is said, as illustrative of the scope of that power: "For example, if, when a patent is about to issue, the Secretary should discover a fatal defect in the proceedings, or that by reason of some newly ascertained fact the patent, if issued, would have to be annulled, and that it would be his duty to ask the Attorney General to institute proceedings for its annulment, it would hardly be seriously contended that the Secretary might not interfere and prevent the execution of the patent. He could not be obliged to sit quietly and allow a proceeding to be consummated, which it would be immediately his duty to ask the Attorney General to take measures to annul."

III.

The judgment of the Secretary can not be controlled by mandamus.

If the prior determination of heirship did not exhaust the authority of the Secretary of the Interior, the case stands as if the Secretary were proceeding to consider the merits of the relators' claims in the first instance. In such case no one would suppose that mandamus would issue to control the Secretary's judgment. In the instant case he was proceeding *quasi* judicially, after notice and hearing. If the formal requirements of due process are thus observed, it would seem a matter of no concern to the courts whether the Secretary would decide rightly or wrongly. The matter is in his exclusive jurisdiction, and has been so since 1910. *Hallowell* v. *Commons*, *supra*. The bringing of this petition for mandamus seems an attempt to transfer to the courts a matter not proper for their consideration at all. Elementary principles of mandamus should control. As announced in *Ness* v. *Fisher*, 223 U. S. 683, 693:

> "* * * The court has no general supervisory power over the officers of the Land Department by which to control their decisions upon questions within their jurisdiction."

And in *Oregon* v. *Hitchcock*, 202 U. S. 60, 70:

> * * * So far as a grant of swamp lands is claimed, it must be held that the grant is in process of administration, and, until the legal title passes from the Government, inquiry as to equitable rights comes

> within the cognizance of the Land Department. Courts may not anticipate its action or take upon themselves the administration of the land grants of the United States.

Plaintiff's petition in mandamus in this case, furthermore, was premature. It does not appear that the Secretary's ultimate decision after reconsideration would not be in favor of the relators. Certainly, there is no hint that such would not be the case, if, upon the full facts, relators deserve the decision. In this aspect it would seem that relief by mandamus should be denied on the ground that relators have another adequate, indeed, more simple, remedy, viz., pursuit of their claims before the Secretary of the Interior.

IV.

The order for rehearing was not arbitrary, but within the exercise of reasonable discretion.

The Secretary held, simply, that he had jurisdiction to reconsider the validity of relators' claims of heirship. He withheld any decision on other points (R. 16). The sole point pressed upon the Secretary in relators' motion to dismiss the petition for rehearing (R. 16), as also that presented in the petition for mandamus (R. 9), was the want of jurisdiction to reconsider the prior adjudication. This seems to have gone upon the ground that the statute made any decision of heirship final, and that the Secretary in making such decision acted as a court.

It clearly appears that due notice to all parties concerned and full opportunity to be heard were

afforded. So, in point of form there was no arbitrariness. See *Lowe* v. *Fisher*, 223 U. S. 95, 97.

What grounds the Secretary had for reconsideration we can not tell. It is true that the ground presented by Harrison Tiebault in his petition for rehearing was "newly discovered evidence tending to show that the alleged decree of adoption was void on the ground that it was secured by fraud." (R. 15-16.) But the Secretary would have power to order a rehearing on the old record upon his own motion. Since we have only the decision of the Secretary asserting that he did have power to reconsider and no effort is made to set forth his grounds, the court on the record before it can not say that valid grounds for the order were altogether lacking.

Even assuming *arguendo*, however, that the only possible ground for the rehearing was that mentioned by Harrison Tiebault in his motion, substantial questions were thereby raised well worthy of further consideration. Relators' claims rest entirely on the validity of the decree of adoption by My Soul Tiebault. The Court of Appeals holds that the Secretary proceeded arbitrarily in considering any question as to whether this decree might be void for fraud, first, because Harrison Tiebault claiming under My Soul Tiebault is estopped to dispute the validity of the decree; second, because the decree is not subject to collateral attack for fraud. The Court of Appeals in thus holding, however, assumed that the Nebraska court had jurisdiction (R. 23). Taking the same assumption, if the fraud were perpetrated by the

parents of relators against My Soul Tiebault, Harrison Tiebault's property rights would have been infringed and he would not be bound by the decree of adoption. *Tucker* v. *Fisk*, 154 Mass. 574. Especially would this be true if relators' parents are to profit by the fraud. No notice was required by law to be given him of the adoption proceedings, and he was in no sense a party thereto. The fraud, therefore, need not have been perpetrated, as the court below suggests, by My Soul Tiebault, but against him. Moreover, Harrison Tiebault may have had valid excuse for failure immediately to attack the adoption decree.

If the Nebraska court had no jurisdiction to render the decree of adoption, it is plain that its decree may be disregarded altogether in a collateral proceeding, and there can be no ground of estoppel. Although the particular elements of fraud presented to the Secretary on the motion for rehearing do not appear, on general demurrer to the return fraud must be deemed to be well pleaded. *Christmas* v. *Russell*, 5 Wall. 290, 303. Hence any evidence of fraud which would vitiate the decree would be admissible even in a court of law. For all we know the evidence which Harrison Tiebault desired to present to the Secretary might have tended to show that the jurisdiction of the Nebraska court was secured by fraudulent representations as to the domicile of the parties; hence the decree was rendered by a court proceeding *coram non judice*. If the Nebraska court assumed jurisdiction in the adoption proceedings only by rea-

son of fraud, the decree of adoption would be disregarded as a nullity in the Nebraska courts. The Secretary under such circumstances could do likewise. In *Jaster* v. *Currie*,[1] 69 Nebr. 4, it was held that an Ohio judgment, service upon the defendant having been secured by fraud, could be disregarded in a collateral proceeding in Nebraska as rendered by a court not having jurisdiction. See in accord *Abercrombie* v. *Abercrombie*, 64 Kans. 29; *Marx* v. *Fore*, 51 Mo. 69; *Frawley* v. *Pa. Casualty Co.*, 124 Fed. 259, 267; *Wood* v. *Wood*, 78 Ky. 624; *Dunlap* v. *Cody*, 31 Iowa 260; *Keeler* v. *Elston*, 22 Nebr. 310.

In considering whether the Secretary was arbitrary in proceeding to reconsider on the sole ground of newly discovered evidence tending to show that the decree of adoption was secured by fraud, the question here is not whether the rule of law adopted by the Nebraska court in *Jaster* v. *Currie* is sound; and not whether, when the Secretary does come to consider the merits, he must regard as conclusive the adoption decree. The question is not at all whether the relators on the merits are entitled to decision, but whether the Secretary has power to consider the merits. It is submitted that the ground for review presented to the Secretary was not friv-

[1] The judgment of the Nebraska court was reversed by this court in *Jaster* v. *Currie*, 198 U. S. 144, not on the ground, however, that fraud in securing jurisdiction could not be set up in a collateral proceeding in Nebraska, where the distinction between actions at law and suits in equity has been abolished, but on the ground that the facts of the case did not constitute fraud.

olous. Whether ultimately worthy of being sustained, and what effect the evidence to be produced would have on the merits of relators' claims, is not for the courts but for the Secretary of the Interior exclusively to consider. *Hallowell* v. *Commons*, *supra*.

CONCLUSION.

The judgment of the Court of Appeals should be reversed, with directions to dismiss the petition for mandamus.

JOHN W. DAVIS,
Solicitor General.

ROBERT SZOLD,
Attorney.

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